

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEW JERSEY**

In re: Chapter 11
Case Nos. 01-30135 (RG) and 01-38790 (RG)
G-I Holdings Inc., et al, (Jointly Administered)
Debtors.
_____ /

UNITED STATES OF AMERICA
Plaintiff,

and

THE STATE OF VERMONT,
Plaintiff-Intervenor,

v. Adversary Proceeding No. 08-2531 (RG)

G-I HOLDINGS INC., et al.,
Defendants.
_____ /

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WHEREAS on January 5, 2001, G-I Holdings Inc. (“G-I”) commenced a voluntary case under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the District of New Jersey (the “Bankruptcy Court”). G-I is a corporation organized and existing under the laws of the State of Delaware, with a principal place of business located at 1361 Alps Road, Wayne, New Jersey 07470. On August 3, 2001, G-I’s subsidiary, ACI Inc. ~~“ACI,” and together with G-I, the “Debtors”~~ (“ACI”) commenced a voluntary case under chapter 11 of the Bankruptcy Code. Thereafter, an order directing the joint administration of the ~~Debtors’~~ G-I’s and ACI’s chapter 11 cases was entered on October 10, 2001. The cases are administered under the caption - In re: G-I Holdings Inc., et al. (f/k/a/ GAF Corporation), Case Nos. 01-30135 and 01-38790 (RG) (Jointly Administered) (the “Bankruptcy Cases”). ~~The Debtors~~ G-I and ACI continue to be authorized to operate their businesses and to manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

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WHEREAS, Plaintiff, the United States of America (“United States”), by the authority of the Attorney General of the United States, and acting at the request of the Administrator of the United States Environmental Protection Agency (“EPA”), filed an Adversary- Complaint (the “Complaint”) on November 5, 2008, against G-I for declaratory and injunctive relief pursuant to the Declaratory Judgment Act, 28 U.S.C. § 2201(a); Section 303 of the Clean Air Act (“CAA § 303”), 42 U.S.C. § 7603; and Section 7003 of the Solid Waste Disposal Act, commonly known as the Resource Conservation and Recovery Act (“RCRA § 7003”), 42 U.S.C. § 6973, in connection with the Vermont Asbestos Group Mine Site (“VAG Site”) in Lowell and Eden, Vermont;

WHEREAS, the Complaint requested that the Court direct G-I to take immediate action at the VAG Site to abate conditions that the United States alleges present, or may present, an

imminent and substantial endangerment to public health, welfare, and the environment, within the meaning of CAA § 303 and RCRA § 7003 and implementing federal and state regulations;

WHEREAS, the State of Vermont (“Vermont”) has worked cooperatively with the United States in seeking injunctive relief at the VAG Site, has alleged causes of action and claims that share a common question of law or fact with the United States’ causes of action and claims, and desires to resolve its claims against G-I through participation as a party in this Consent Decree and Settlement Agreement (the “Consent Decree”);

WHEREAS, the Ruberoid Company (“Ruberoid”) merged into the General Aniline & Film Corporation in 1967, and in 1971, General Aniline changed its name to GAF Corporation (“GAF”). GAF Corporation liquidated in 1989 and transferred its building material and roofing assets and liabilities to Edgecliff Inc. G-I is the successor in interest to Edgecliff Inc.;

WHEREAS, in its Complaint, the United States alleges that from 1936 to 1975, G-I’s predecessors mined and milled asbestos at the VAG Site by mechanically separating asbestos fibers that are embedded in ore-bearing rock and that a significant portion of the Site acreage is contaminated by asbestos-containing waste ~~material/rock~~ and mill tailings ~~containing nickel and chromium~~ that accumulated during G-I’s predecessors’ operation and under their direction, and further alleges that prior to the sale of the property, G-I’s predecessors failed to take significant action to mitigate or minimize the ongoing environmental and public health consequences of its milling and disposal practices;

WHEREAS, the United States alleges that G-I is liable pursuant to CAA § 303 and RCRA § 7003 ~~and state environmental law~~ as a prior owner and operator of a pollution source; as a person causing or contributing to the alleged pollution; and/or as a person responsible for the past handling, storage, and disposal of solid waste and has requested that this Court enjoin G-I to

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take immediate action to abate the alleged endangerment to public health, welfare, and the environment posed by the VAG Site;

WHEREAS, the United States, on behalf of EPA, the United States Department of the Interior (“DOI”), and the National Oceanic and Atmospheric Administration (“NOAA”) contends that G-I is liable under the Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA”), 42 U.S.C. § 9601 et seq., for response costs ~~and natural resource damages~~ incurred and to be incurred by the United States in the course of responding to releases and threats of releases of hazardous substances into the environment and natural resource damages and costs of assessment incurred and to be incurred by the United States at (i) the VAG Site; (ii) the GAF Chemicals Site, the LCP Chemicals Inc. Superfund Site, and the Diamond Alkali Superfund Site (collectively, the “Linden Sites”); and (iii) ~~eight-nine additional-other~~ Sites where G-I is alleged to be a generator (collectively, the “Generator Sites”), each as further described in Attachment 1 (the “Site Inventory”), attached and incorporated herein by reference;

WHEREAS, on October 14, 2008, the United States filed in the Bankruptcy Cases its Proof of Claim and Protective Proof of Claim of the United States of America, on ~~b~~Behalf of the United States Environmental Protection Agency, the National Oceanic ~~a~~And Atmospheric Administration, and the United States Department of the Interior, Fish and Wildlife Service (Claim No. 1509) (the “US Proof of Claim”),- which Proof of Claim asserted a claim for the costs and damages described in the prior paragraph (the “US Monetary Claim”);

WHEREAS, the US- Proof of Claim states the United States’ position that G-I ~~must~~is required by law to perform the injunctive relief sought in the Complaint;

WHEREAS, Vermont contends that G-I is liable (i) under CERCLA for response costs ~~and natural resource damages~~ incurred and to be incurred by Vermont in the course of responding

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to releases and threats of releases of hazardous substances into the environment at and from the VAG Site and for natural resource damages incurred and to be incurred by Vermont at the VAG Site, (ii) under 10 V.S.A. §§ 1259, 1274, 6601a, 6615 and 6616 for the costs of investigation, removal and remedial action incurred and to be incurred in the course of responding to releases and threats of releases of hazardous materials into the environment and to the unauthorized discharge of waste into waters of the State at and from the VAG Site, and (iii) for public property destroyed, damaged or injured by the release of hazardous materials and the unauthorized discharge of waste into waters of the State at and from the VAG Site;

WHEREAS, Vermont filed in the Bankruptcy Cases proofs of claim (Claim Nos. 1157, 1158 and 1159) (the “Vermont Proofs of Claim”) for the costs and damages described in the prior paragraph (the “Vermont Claim”);

WHEREAS, G-I disputes the amount and the basis of the liabilities set forth in ~~for~~ the United States’ and Vermont’s Proofs of Claim, and, but for this Consent Decree, would object to the Proofs of Claim, in whole or in part;

Commented [alh1]: Review documents for consistent treatment of G-I and ACI—always both? Sometimes but not other times?

WHEREAS, ~~the Debtors~~ G-I and ACI deny any liability to the United States, EPA, DOI, NOAA, the State of Vermont or any other federal or state agency arising out of the transactions or occurrences alleged in the US Proof of Claim, the Vermont Proof of Claim, the Complaint, or any other submission, filing, or document prepared by the United States or the State of Vermont in connection with this proceeding and denies that conditions at or emanating from the VAG Site present or may present an imminent and substantial endangerment to public health, welfare, or the environment;

WHEREAS, upon being informed of the United States’ allegations, G-I has worked cooperatively with the United States and Vermont to reach the settlement set forth in this Consent

Decree and to determine and implement abatement measures at the VAG Site in an expedited manner and without resort to litigation;

~~WHEREAS, Debtors seek, through the resolution of environmental liabilities for the VAG Site, the Linden Sites, and the Generator Sites as set forth herein, to obtain protection to the maximum extent permitted by law from and against all claims related to the VAG Site, the Linden Sites, and the Generator sites that have been asserted or could have been asserted by the United States or Vermont for injunctive relief or response costs;~~

WHEREAS, the United States, Vermont, and G-I (“the Parties”) recognize, and the Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith and at arm’s length, and is fair, reasonable, consistent with the goals of the CAA, RCRA, CERCLA, and their implementing regulations;

~~WHEREAS this Consent Decree is in the public interest and is an appropriate means of resolving these matters, and that its entry is in the best interests of the Parties and is in the public interest;~~

~~WHEREAS the Parties hereto desire to settle, compromise, and resolve certain of their disputes which may have otherwise been the subject of an estimation hearing, without the necessity of an estimation hearing;~~

NOW, THEREFORE, before the taking of any testimony, without the adjudication or admission of any issue of fact or law except as provided in Section I (Jurisdiction and Venue), and with the consent of the Parties,

IT IS HEREBY ADJUDGED, ORDERED, AND DECREED as follows:

I. JURISDICTION AND VENUE

1. The ~~Bankruptcy~~^{is} Court has jurisdiction over the subject matter of this action pursuant to Section 303 of the Clean Air Act, 42 U.S.C. § 7603; Section 7003 of RCRA, 42 U.S.C. § 6973; Sections 107(a), 107(f) and 113(b) of CERCLA, 42 U.S.C. §§ 9607(a), 9607(f) and 9613(b); Section 311 and 504 of the Federal Water Pollution Control Act ("FWPCA"), 33 U.S.C. §§1321 and 1364; and 28 U.S.C. §§1331, 1345, 1355 and ~~1367~~, and over the Parties. By appearing and asserting claims in this proceeding, Vermont has submitted to the jurisdiction of this Court for all purposes related to this Consent Decree, including any proceedings to enforce this Consent Decree or to resolve any disputes arising under this Consent Decree, and has agreed to a limited waiver of its sovereign immunity and Eleventh Amendment immunity only to the extent of any proceedings to enforce this Consent Decree or to resolve any disputes arising under this Consent Decree~~has waived any objections to jurisdiction based on sovereign immunity or the Eleventh Amendment.~~

Commented [alh2]: ASARCo's settlement agreements also include sections 157 and 1334; are they applicable here?

2. Venue is proper in the District of New Jersey pursuant to Section 303 of CAA, 42 U.S.C. § 7603; Section 113(b) of CERCLA, 42 U.S.C. § 9613(b); and 28 U.S.C. §§ 1391(b), § 1391(c), and 1395(a), because G-I conducts business in this district and has sought bankruptcy protection here.

II. APPLICABILITY

3. The obligations of this Consent Decree apply to and are binding upon the United States, the State of Vermont, and G-I, as defined herein, and to any of G-I's and ACI's future successors and assigns.

4. In any action to enforce this Consent Decree, G-I shall not raise as a defense the failure by any of its officers, directors, employees, agents, contractors, or corporate affiliates or

subsidiaries to take any actions necessary to comply with the provisions of this Consent Decree that are applicable to such person unless or except as provided in Section XIII (Force Majeure).

III. DEFINITIONS

5. Terms Defined by Statute and/or Regulation. Terms used in this Consent Decree that are defined in the CAA, CERCLA, RCRA, FWPCA, the U.S. Bankruptcy Code, 11 U.S.C. § 101, et seq., and Vermont state statutes, or in federal and state regulations promulgated pursuant to those statutes, ~~and~~ shall have the meanings assigned to them there, unless otherwise provided in this Consent Decree. In the event that a term is defined in both federal and Vermont statutes or regulations, the term shall have the meaning provided by federal law.

~~5.~~ Other Defined Terms. Whenever the terms set forth below are used in this Consent Decree, the following definitions shall apply:

~~b.6.~~ "Additional Sites" shall mean those Sites, including but not limited to the Sites listed on Attachment 5, for which G-I or its predecessors received a notice of liability, request for information, or reached a settlement with the United States or other responsible party prior to the Lodging Date.

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~~e.a.~~ "Allowed General Unsecured Claim" shall mean a non-priority, general unsecured claim against G-I in the Bankruptcy Cases that is not subject to objection and is allowed in accordance with the provisions of the Bankruptcy Code.

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~~d.b.~~ "ANR" shall mean the Vermont Agency of Natural Resources.

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~~e.c.~~ "Asbestos product" shall mean milled and friable asbestos.

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~~f.~~ "Acknowledgment of Liability/Linden Agreement" shall mean the Acknowledgement

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of Liability Agreement/agreement, dated _____, and attached hereto as Attachment 6, whereby ISP Environmental Services, Inc. ("IES") acknowledged any and all environmental

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~~liabilities of the Debtors G-I, ACL, GAF, GAF Chemicals Corporation, or their subsidiaries and affiliates to the United States for the Linden Sites, subject to HES's defenses and conditioned upon the United States' consideration as stated in the Acknowledgement of Liability Linden Agreement.~~

~~g. "Consent Decree Effective Date" shall mean the later of (i) the date that the order of the Bankruptcy Court entering this Consent Decree becomes a final, non-appealable order, and (ii) the Plan Effective Date.~~

~~h.d. "DeDay" shall mean a calendar day unless expressly stated to be a business day. In computing any period of time under this Consent Decree, when the last day would fall on a Saturday, Sunday, federal holiday, or Vermont holiday the period shall run until the close of business of the next business day.~~

~~i. "Entry Date" shall mean the date that this Consent Decree is entered by an order of the Bankruptcy Court, following the completion of the public comment period required by Section XXV hereof and the filing by the United States of a motion to enter this Consent Decree.~~

~~e. "Dollars" or "\$" means United States dollars and, when used in connection with payment obligations means, unless otherwise specified, payment of the full amount specified without discounting.~~

~~j.f. "Generator Sites" shall mean the nine sites at which G-I has been identified as a potentially responsible party listed in Paragraph 626262626262 of this Consent Decree.~~

~~k.g. "G-I" shall mean G-I Holdings, Inc.~~

~~h. "G Holdings, I Affiliated Entities" shall mean the entities listed on Attachment 5 to this Consent Decree.~~

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~~m.i.~~ i. “Interest” shall mean the statutory rate of interest set forth at 26 U.S.C. § 9507,
compounded annually on October 1 of each year.

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~~m.j.~~ j. “ISP Entities” shall mean the entities listed on Attachment 6 to this Consent
Decree.

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~~m.k.~~ k. “Linden Sites” shall mean the GAF Chemicals Site, the LCP Chemicals Inc.
Superfund Site, and the Diamond Alkali Superfund Site.

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~~m.l.~~ l. “Lodging Date” shall mean the later of (i) the date that this Consent Decree and
Settlement Agreement is initially filed by the United States with the Bankruptcy Court prior to
the commencement of the public comment period required by Section ~~XXIV~~ XXIV ~~XXV~~
date that the Bankruptcy Court approves G-I’s entry into this Consent Decree and authorizes G-I
to undertake those obligations set forth therein which are tied to the Lodging Date.

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~~m.m.~~ m. “Monetary Claims” shall mean all claims by the United States or Vermont against
G-I for past or future response costs or Natural Resource Damages (including assessment costs)
incurred at or in connection with (i) the VAG Site, (ii) the Linden Sites and/or (iii) the Generator
Sites, but shall not include payments by G-I to the Trust as required by Paragraph 10.

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~~m.n.~~ n. “National Contingency Plan” or “NCP” shall mean the National Oil and Hazardous
Substances Contingency Plan codified at 40 C.F.R. ~~p~~ 300.

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~~m.o.~~ o. “On-Site Log” shall mean a written daily log maintained by the VAG security guard
that contains notations of daily and periodic activity, inspection results, and personal
observations of the condition of the VAG Site.

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~~m.p.~~ p. “Paragraph” shall mean a portion of this Consent Decree identified by an Arabic
numeral.

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~~m.q.~~ q. “Part” shall mean a portion of the Consent Decree identified by a capital letter.

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~~u.~~ “Plan Dollars” shall mean dollars paid in satisfaction of claims filed in the Debtors’
~~the Debtors~~ G-I and ACI that is confirmed by the Bankruptcy Court.

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~~v.~~ “Plan Effective Date” shall mean the effective date of any plan of reorganization for
~~the Debtors~~ G-I and ACI that is confirmed by the Bankruptcy Court.

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~~w.s.~~ “Preliminary Period” shall mean the period commencing 15 days after the
Lodging Date and ending on the last day of the calendar month in which the ~~Consent Decree~~ Plan
Effective Date occurs.

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~~t.~~ “Preliminary Period Contribution” shall mean funding provided to the Trust by G-I
during the Preliminary Period. The Preliminary Period Contribution shall not exceed \$350,000,
including the \$50,000 Initial Contribution required by Paragraph 10.a.

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~~x.u.~~ “Section” shall mean a portion of this Consent Decree identified by a Roman
numeral.

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~~v.~~ “Settlement Year” for numbers greater than one shall mean the twelve ~~month~~ period
commencing on the first day following the conclusion of the prior Settlement Year.

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~~y.~~ “Settlement Year One” shall mean the one ~~year~~ period commencing on the first
day following the end of the Preliminary Period.

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~~aa.~~ “Site” shall mean and include (i) for those sites now or hereafter included on the
National Priorities List (“NPL”), all areas of the site as defined by EPA for purposes of the NPL,
including any later expansion of such site as may be determined by EPA, and any affected
natural resources, or (ii) for those sites or portions of sites not included on the NPL, all areas and

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~~natural resources affected or potentially affected by the release or threatened release of
hazardous substances.~~

~~bb.x.~~ “Statement of Work” or “SOW” shall mean the Statement of Work attached as

Attachment 2 to this Consent Decree and incorporated herein.

~~ee.~~ “Trust Administrative Costs” shall mean the costs of administering the Injunctive

Trust and not any of the costs incurred in connection with the Work required under this Consent
Decree and the SOW. Trust Administrative Costs shall include the Trustee’s fees and out of
pocket expenses, the necessary costs of accountants or lawyers retained to advise the Trustee,

~~and the costs of any insurance procured by the Trustee, and the costs incurred in connection with
the dispute resolution provisions applicable to the VAG Site under Section XIV this Consent
Decree.~~ We should make sure we state that G-I is responsible for paying these somewhere in the

CD.

y.

~~dd.z.~~ “Trust Agreement” shall mean the “Custodial Trust Agreement for the Vermont

Asbestos Group Site” attached as Attachment 4 to this Consent Decree and fully incorporated by
reference herein.

~~ee.aa.~~ “Trustee” shall mean the individual(s) designated by G-I, with the approval of

EPA in consultation with the State of Vermont, to administer the Injunctive Trust.

~~ff.bb.~~ “United States” shall mean, individually and collectively, the United States and

~~each of its agencies, including without limitation~~ the Environmental Protection Agency (“EPA”),
the United States Department of the Interior (“DOI”), ~~and the National Oceanic and Atmospheric~~
Administration (“NOAA”), and the United States Environment and Natural Resources Division
of the Department of Justice on behalf of EPA, DOI, and/or NOAA.

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~~gg-cc.~~ “VAG Future Response Costs” shall mean all costs, including but not limited to direct and indirect costs; that the United States, on behalf of EPA or DOJ, or Vermont incurs after October 15, 2008 in connection with the VAG Site. VAG Future Response Costs shall include all costs not inconsistent with the NCP, which may include, but are not limited to, payroll costs, costs incurred by the United States or Vermont and their representatives (including contractors) under or in connection with a contract or arrangement for technical assistance in connection with the VAG Site, travel costs, laboratory costs, enforcement costs, community relations costs, enforcement and legal support costs, records management costs, technical support costs, interagency and intergovernmental agreement costs (including ATSDR costs), costs under a cooperative agreement with the State, and data management costs.

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~~hh-dd.~~ “VAG Future Response Cost Claim” shall mean the claims of the United States and the claims of the State of Vermont, under CERCLA or any other federal or state law, for reimbursement of VAG Future Response Costs.

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~~ii-ee.~~ “VAG NRD Claims” shall mean the claims of (i) the United States on behalf of DOI and ~~NOAA and~~ (ii) the State of Vermont, ~~under CERCLA and/or any other federal or state law, including common law,~~ for ~~damages-injuries~~ to natural resources resulting from releases of hazardous substances ~~or~~ relating to the VAG Site, ~~including the VAG Off Site Locations.~~

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~~jj-ff.~~ “VAG NRD Trustees” shall mean ~~the federal and state agencies that have trust responsibilities for natural resources, including without limitation~~ DOI, NOAA, and the State of Vermont.

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~~kk.~~ “VAG Off Site Locations” shall mean ~~locations to which hazardous substances that originated at the VAG Site have, or may have, come to be located.~~

~~h.gg.~~ “VAG Site” shall mean ~~EPA I.D. # 0 IED~~ the properties located in Eden and Lowell, Vermont encompassing approximately 2500 acres ~~I decided to go with the larger estimate of acres as it may be closer to the older boundaries of the Site~~ as generally depicted on the VAG Site Map including all areas where mining and milling activities took place - and shall also include all locations where materials generated or created at these properties at EPA I.D. # 0 IED have come to be located.

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~~mm.hh.~~ “VAG Site Map” means that map of the VAG Site depicting, among other things, locations at which certain Work shall be performed, attached as Attachment 3 to this Consent Decree and fully incorporated by reference herein.

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~~nn.ii.~~ “Work” shall mean all injunctive relief activities G-I or the Trust is required to perform under this Consent Decree and the SOW.

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IV. ESTABLISHMENT OF VAG SITE INJUNCTIVE TRUST

~~6-7.~~ By no later than ~~fifteen~~ five days following the Lodging Date, G-I shall establish an Injunctive Trust (the “Trust” and/or “Trustee”) to accomplish the ~~injunctive relief (“Work”)~~ required pursuant to Section V of this Consent Decree and fund the Trust in accordance with Paragraph ~~1010101010910~~. The Trust shall select and utilize one or more designated contractors (“Contractor”) to implement the Work. G-I’s selection of the Trustee and the Trustee’s selection of the Contractor(s) shall be subject to written approval by EPA, in consultation with Vermont. The Trust shall perform all Work required by the SOW, -and such ~~work~~ Work shall be performed in accordance with the SOW. G-I shall provide funds to the Trust on a periodic basis, as provided in Paragraph ~~1010101010910~~ and in the Trust Agreement-, to allow the Trust to timely and fully obligations pursuant to this Consent Decree. All activities undertaken by the Trust pursuant to the

Trust Agreement shall be performed in accordance with the requirements of all applicable federal and state laws and regulations.

8. The United States and Vermont have agreed to G-I's proposed use of the Trust solely as a means for securing the Work and solely for the purposes of settlement. The proposed use of a trust by G-I shall in no way convert the United States' CAA § 303 and RCRA § 7003 causes of action into monetary claims, and in the event that this Consent Decree is not approved for any reason, nothing herein shall be construed as a waiver of the United States' or Vermont's rights to pursue any injunctive causes of action they may have against G-I. In addition, G-I shall be responsible for insuring that the Trust performs all of the actions set forth in this Consent Decree. I thought we agreed that we need a statement to this effect. If the Trust is funded by G-I but fails to perform, what is our recourse? Shouldn't it be up to G-I to insure performance?

7.9 G-I's ~~only~~ obligations with respect to the Trust and the Work shall be to (i) establish the Trust and select the Trustee, subject to approval by EPA in consultation with ~~V~~ANR Vermont; (ii) fund the trust in accordance with Paragraph ~~1010101010910~~; and (iii) to undertake the tasks assigned ~~into~~ G-I in Part V.H. G-I, EPA, and ~~V~~ANR shall not be or be deemed to be owners, operators, trustees, partners, agents, shareholders, officers, or directors of the Trust. The Trust shall not be deemed to be the successor to any liabilities of G-I or ~~its affiliates listed on~~ that the foregoing shall not affect the ~~Custodial~~ Trust's obligations under this Consent Decree to the Work.

8.10. G-I shall provide funding to the Trust for purposes of implementing the Work under Section V ("CAA and RCRA Injunctive Relief at the VAG Site"), as set forth below:

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- a. Upon the establishment of the Trust, G-I shall transfer an Initial Contribution of \$50,000 to the Trust.
- b. ~~No later than~~ Within thirtyfourteen days ~~of~~after the Lodging Date, the Trustee shall ~~submit-prepare to EPA for review and approval a work plans~~ for the Work to be performed during the Preliminary Period in accordance with Section XII. The work plans shall include, including of the cost of performing the Work required under Parts V. A-D planned for the Preliminary Period, ~~and shall submit the plan to EPA for review and approval in accordance with Section XII.~~ reviewing the plans, the Trust shall diligently proceed to make all necessary preparations for performance of the Work. Within seven days of EPA's approval of ~~the each plan and the Trustee's~~ funds to the Trust equal to the estimate for performing the Work planned for the Preliminary Period less the balance of funds held by the ~~Custodial Trust, as of the date of the certification n-~~ Work during the Preliminary Period, including the Initial Contribution, exceed \$350,000, exclusive of Trust Administrative Costs.
- c. After the Preliminary Period, G-I shall be obligated to continue funding the Injunctive Trust as set forth and subject to the limitations in the Trust Agreement and as limited by the maximum funding obligations set forth in Paragraph ~~1010101010910~~10 through
- d. Settlement Year One Cost Cap. During Settlement Year One, G-I's obligation to provide funding to the Trust, other than for Trust Administrative Costs, shall be limited to the amount of \$1,000,000 less such amounts as were funded to the Trust during the Preliminary Period. Thus, if \$350,000 in funding is provided by G-I to the Trust during the Preliminary Period, the maximum funding G-I shall be obligated to provide to the Trust for Settlement Year One shall be \$650,000.

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e. Settlement Years Two-Seven Cost Caps. During each of Settlement Years Two, Three, Four, Five, Six and Seven, G-I's obligation to provide funding to the Trust, other than for Trust Administrative Costs, shall be limited to an annual cost cap of \$1,000,000.

f. Settlement Year Eight Cost Cap. During Settlement Year Eight, G-I's obligation to provide funding to the Trust, other than for Trust Administrative Costs, shall be limited to \$750,000.

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g. ~~Once~~Except as set forth in Paragraph 10.k, once the annual cost caps set forth above been reached, G-I shall be under no further obligation to provide funding to the Injunctive Trust for that Settlement Year.

h. Security Cost Cap. G-I's obligation under this Consent Decree to provide funding to the Trust for Site Security under Part C below shall be subject to an aggregate cost cap of \$250,000.

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i. Monitoring/Dust Suppression Cost Cap. G-I's obligation under this Consent Decree to provide funding to the Trust for Air and Meteorological Monitoring and Dust Suppression under Parts E through G below shall be subject to an aggregate cost cap of \$2,500,000 (the "Monitoring and Dust Suppression Cap").

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j. Investigation Cost Cap. G-I's obligation under this Consent Decree to provide funding to the -Trust for Investigation of Off-Site Transport, Sale, and Use of Mine Tailings and Crushed Rock under Part I below shall be subject to an aggregate cost cap of \$5,000,000.

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k. In the event that the total funding provided by G-I to the Trust under this Paragraph ~~1010101010910~~ in any Settlement Year is less than the annual cap set forth in subparagraphs d, difference between the cost cap ~~for the following Settlement Year shall be increased by~~ and the and used in subsequent settlement years, provided, however, that ~~any amounts carried over from~~

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~~fund the Trust after Settlement Year 9, regardless of whether the cost caps have been fully~~
~~exhausted. Nothing in this -Paragraph 10.k shall not affect the aggregate cost cap applicable to~~
category of Work.

~~9.11.~~ The Trustee shall provide an annual accounting of all Trust ~~receipts and~~
expenditures, along with documentation adequate to demonstrate that the Trust has met the
requirements for completion of injunctive relief and funding under this Consent Decree.

V. CAA AND RCRA INJUNCTIVE RELIEF AT THE VAG SITE

A. ~~Installation and Maintenance of Perimeter Gates, -and Fencing, and Signage.~~

~~10.12. By no later than thirty days after the Lodging Date~~ No later than thirty days after
~~EPA approves the work plan(s) required in Paragraph 10. b.,~~ the Trust shall ~~complete~~ installation
~~of signs, -chain-link gates, -and fencing extending beyond the gates so as to restrict passage~~
around the gates on either side, in accordance with the SOW. ~~The signs, chain-link gates, and~~
~~fencing -shall be installed at approximately the locations identified on the VAG Site Map. In~~
~~addition, signs shall be posted in accordance with the SOW.~~

~~11.13.~~ Beginning immediately upon completion of installation of the chain-link gates,
~~and fencing and signage,~~ the Trust shall begin inspections ~~ng the gates, and fencing, and signage~~
in accordance with Paragraph ~~23232323232223~~ to ensure that the perimeter gates and attached
maintained in good operating condition ~~and that the signs remain in place~~ through termination of
this Section V.

B. ~~Installation of "Jersey" Barriers/Access Restrictions.~~

~~12.14.~~ As soon as Site conditions allow, but ~~no later than 30~~ ~~sixty~~ days after EPA
~~approves the work plan(s) required in Paragraph 10. b., - by no later than sixty days following the~~
~~Lodging Date,~~ the Trust ~~shall~~ ~~shall take~~ ~~complete~~ measures to prevent vehicular access to the top

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of the Eden Mine Tailings Pile by installing concrete barriers ("Jersey Barriers" or ~~any their~~
~~appropriate means to restrict access agreed to by EPA~~) in accordance with the attached SOW, at
~~approximately~~ the locations indentified on the VAG Site Map.

~~13.15.~~ Beginning immediately upon completion of installation of the Jersey Barriers ~~or~~
~~the equivalent~~, the Trust shall implement measures set forth in Paragraph ~~23232323232223~~ to
barriers are maintained in good condition, until termination of the Injunctive Trust.

C. Security of On-Site Buildings.

~~14.16.~~ No later than ~~30~~~~sixty~~ days after EPA approves the work plan(s) required in
Paragraph 10. b., ~~By no later than sixty days after the Lodging Date,~~ the Trust ~~shall complete~~
~~measures required to shall~~ secure the on-site buildings as set forth in the SOW. The buildings
designated on the VAG Site Map will be boarded up and padlocked. In addition, the Trust shall
remove the readily-identifiable Asbestos Product from the areas around the building perimeters
and secure the Asbestos Product on-site, as designated in the SOW. ~~The Trust will also take~~
measures to ensure that the buildings containing Asbestos Product maintain sufficient integrity to
prevent a material release of Asbestos Product to the environment.

~~15.17.~~ Beginning immediately upon completion of the work in Paragraph
take measures set forth in Paragraph ~~23232323232223~~ to ensure that the buildings remain secure
termination of the Trust.

D. VAG Site Security Guard.

~~16.18.~~ No later than ~~thirtyseven~~ days after EPA approves the work plan(s) required in
Paragraph 10. b., ~~By no later than thirty days after the Lodging Date,~~ the Trust shall retain an
individual or firm to perform security work at the Site ("Security Contractor") and to generally
oversee security of the Site through termination of the Injunctive Trust, as specified in the SOW.

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~~The Trust's~~ selection of the Security Contractor shall be subject to the written approval of EPA, in consultation with Vermont.

~~17.19.~~ The Security Contractor shall provide a security presence at the Site based on a seasonal schedule, as specified in the SOW and shall begin work immediately upon selection by the Trust.

~~18.20.~~ The Security Contractor shall provide one or more guards to patrol on foot or by vehicle, as appropriate, the designated "patrol circuit" identified on the VAG Site Map. The Security Contractor shall maintain the written results of the patrols in the On-Site Log, as required by the SOW.

~~19.21. Operations.~~ The Trust shall install and maintain a mobile office and/or trailer at the VAG Site, at ~~approximately~~ the location identified on the VAG Site Map. The trailer shall serve as an operating office and communication center for the Security Contractor while present on-site and as the repository for the On-Site Log(s), all maintenance records, and any other documentation required to be maintained under the terms of this Consent Decree.

~~20.22. OSHA Compliance.~~ The contract retaining the Security Contractor shall require the Security Contractor to comply with all applicable Occupational Safety and Health Administration ("OSHA") regulations and Vermont Occupational Safety and Health Administration ("VOSHA") regulations. Nothing contained in this Consent Decree, the SOW, any applicable Work Plan, or Health and Safety Plan ("HASP") shall relieve the Security Contractor of its responsibility in this regard.

~~21.23. Physical Inspections.~~ In accordance with a "patrol circuit" as set forth in the SOW, and to the extent reasonably feasible, the Security Contractor shall conduct daily physical inspections of the exterior gates, ~~and~~ fencing, and signs and weekly inspections of the Jersey

Barriers and Site buildings. The Security Contractor shall document in the On-Site Log the inspection results and repairs determined to be necessary to ensure continued compliance with the terms of this Consent Decree through termination of this Section V.

~~22-24.~~ Maintenance of On-Site Log. The Security Contractor shall maintain a written daily log with notations of daily and periodic activity, inspection results, and other observations and shall make the log available for inspection by EPA, other federal personnel, and Vermont personnel with appropriate identification upon request.

~~23-25.~~ Submission of periodic reports. The Security Contractor shall compile and integrate the information collected through patrols and inspections and shall provide it in a ~~monthly~~quarterly progress report to EPA and Vermont, as set forth in the SOW and in Section XI (Recordkeeping and Reporting Requirements). The first quarterly progress report shall be due 15 days after the Lodging Date.

~~24-26.~~ Interim Special Reports. The Security Contractor shall provide prompt notice to EPA, Vermont, and the appropriate law enforcement authorities of any unusual activity at the VAG Site, including any breach of security on-site, and shall be responsible for alerting emergency ~~response teams personnel~~ in a prompt manner, as necessary, to address any environmental, public health, or safety emergencies at the VAG Site.

E. Installation and Operation of Meteorological Stations.

~~25-27.~~ No later than 30 days after approval by EPA of the work plan required in the SOW (unless Site conditions are not conducive to installation, in which case additional time will be allowed to complete installation). By no later than May 1, 2010, 120 days after or, if the Lodging Date, or Preliminary Period Contribution is exhausted, no later than 60 days after the Consent Decree Plan Effective Date, whichever is latest, the Trust shall install three

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meteorological stations at the VAG Site in ~~approximately~~ the locations designated on the VAG
accordance with the requirements set forth in the SOW. The Trust shall ~~continuously operate the~~
from May 1 through November 1 ~~during each of through~~ Settlement Years ~~2 through 8~~ ~~unless~~
until the Monitoring and Dust Suppression Cap has been exhausted.

F. Installation and Operation of Air Monitoring Stations.

~~26-28.~~ As soon as Site conditions allow, but by no later than two weeks following
installation of the meteorological stations ~~or, if the Preliminary Period Contribution is exhausted~~
~~no later than 60 days after the Plan Effective date,~~ the Trust ~~in consultation with EPA,~~ shall
install ~~ten~~ air monitoring stations ~~at the VAG Site in approximately the locations shown on the~~
~~VAG Site Map and~~ in accordance with the requirements set forth in the SOW, and shall begin
conducting air sampling in accordance with the SOW. The Trust shall conduct air monitoring
from May 1 through November 1 ~~through during each of~~ Settlement Years ~~2 through 8~~ ~~unless~~
~~otherwise required by EPA~~ or until the cost caps for this activity have been exhausted.

G. Dust Suppression.

~~27-29.~~ If, at any time, during Settlement Years 1 through 8 or until the Monitoring and
Dust Suppression Cap has been exhausted, the analysis of the air monitoring data indicates to
EPA that dust suppression measures should be implemented, EPA, in consultation with Vermont,
shall direct the Trust to undertake interim dust suppression measures to the extent reasonably
practicable under the circumstances. The Parties agree that interim dust suppression is not
intended to be a substitute for a final remedy, nor must it be designed to ensure zero dust
migration, if this degree of dust suppression cannot be reasonably and economically
accomplished.

H. Investigation of Off-Site Transport, Sale, and Use of Mine Tailings and Crushed Rock

~~28-30.~~ Document Review. By no later than thirty days after the Lodging Date, G-I shall collect, review, and produce to EPA all documents in G-I's custody or control that have not been previously produced to EPA related to the practice of transport, sale, or use of mine tailings or crushed rock off-site during its predecessors' ownership and operation of the VAG Site

~~29-31.~~ Interviews of Individuals with Knowledge of Off-Site Use. By no later than thirty days after the Lodging Date, ~~Based on the document review required under Paragraph 302930,~~ G-I shall identify former G-I employees and others who may have knowledge of off-site transport, sale or use of mine tailings or crushed rock, or who may have access to additional documentation of off-site use. ~~(should we put a timeframe on this???)~~.

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~~30-32.~~ Collection and Tabulation of Information. G-I shall prepare a report regarding the results of its document review, consisting of, at a minimum, individual names, addresses, telephone numbers, and other contact information. G-I shall submit the report to EPA and Vermont within 30 days of completion of the investigative activities set forth in this Part.

~~31-33.~~ Investigation Support. The Trust shall provide funding to Vermont to conduct interviews of former G-I employees and any other person or entity who may have knowledge of off-site transport, sale, or use of mine tailings or crushed rock, and to conduct further investigations related to such off-site usage. The activities to be conducted pursuant to this Paragraph ~~33333333333233~~ shall be determined ~~by in~~ Vermont's discretion, in consultation with G-I nor the Trust shall have any responsibility for recommending, selecting, conducting, or approving activities to be conducted pursuant to this Paragraph. On a periodic basis, ~~but not less~~ shall submit invoices to the Trust setting forth the costs incurred in performing investigations pursuant to this Paragraph, along with reasonable documentation of those costs. Within ~~60~~sixty

of receipt of an invoice for interviewing costs, the Trustee shall inform Vermont and EPA if it objects to any of the invoiced costs. The Trustee may object to invoiced costs only on the grounds that the invoiced costs are inconsistent with the NCP or ~~I deleted this as I am not sure~~ object to the invoiced costs, the Trustee shall pay those costs within ~~ninety~~ 90 days of receipt of invoice, to the extent doing so would not require G-I's funding of the Trust to exceed either an annual cost cap or the aggregate cost cap for offsite investigation activities, as set forth in Paragraph ~~1040101010910~~. If the Trustee objects to any of the invoiced costs, then the Trustee the dispute resolution procedures set forth in Section XIV to resolve the objection. If the Trustee objects to some but not all of the invoiced costs, the Trustee shall pay that portion of the invoice to which the Trustee has no objection within ~~90~~ ninety days of receipt of the invoice and shall invoke dispute resolution with respect to the remainder.

32-34. Sampling and Analysis of Off-Site Material. The Trust shall provide technical to EPA and/or Vermont for the purpose of characterizing potentially asbestos-containing material at off-site locations. The characterization activities to be conducted could include sampling (including activity based sampling), analysis (field or off-site lab), sample management, validation, data management, reporting, or other activities that EPA or Vermont identify as necessary to support the investigation of off-site material, subject to the cost caps set forth in Paragraph ~~1040101010910~~. EPA or Vermont's section of particular characterization activities or shall not be subject dispute resolution. The sampling, analysis, or other activities shall be conducted in accordance with accepted EPA methods as part of a Work Plan, Sampling Plan, and Quality Assurance Project Plan ("QAPP"), submitted to and approved by EPA, in consultation with Vermont, according to the procedures set forth in Section XII.

I. Acceptance of Work

~~33-35.~~ The Trust shall perform all Work in accordance with one or more work plans, health and safety plans, or QAPPs. Except as set forth in Paragraph ~~11117474~~ ~~Error! Reference~~ shall be approved by EPA in accordance with the procedures set forth in Section XII before the Trust commences any Work described in the applicable work plan, ~~health and safety plan~~, or

~~34-36.~~ Immediately upon receipt, the Trustee shall submit all invoices for Work performed to ~~the~~ EPA and ANR, along with a description of the Work performed and any reports or as-built drawings related to the Work performed. The Trustee shall not pay any invoices for Work performed until the Trustee has received from EPA, in consultation with ~~ANR~~ Vermont, notification that EPA agrees that the Work was performed in conformance with the Consent Decree and all documents incorporated herein. ~~If EPA does not inform the Trustee within thirty days of EPA's receipt of an invoice and accompanying documentation that it objects to all or part and acknowledges that delays in implementation of the Work may result if invoices are not approved or rejected within 30~~ thirty days.

~~35-37.~~ The obligations of the Trust and the Trustee hereunder are all subject to the cost caps set forth herein and the funding provided by G-I. The Trust shall have no obligations to undertake activities or expend funds beyond the funding provided by G-I.

VI. TERMS APPLICABLE TO FEDERAL AND STATE VAG MONETARY CLAIMS

~~36-38.~~ The United States² and Vermont²s have asserted ~~aggregate total monetary claims~~ Monetary Claims against G-I at the VAG Site ~~for approximately \$_____.~~ In order to reach a settlement of these claims without resort to litigation, the Parties have agreed that ~~the federal and state claims for the VAG Site shall be paid in Plan Dollars equal to 8.6 percent of the~~

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~~claimed amount and that in no event shall the aggregate total allowed claims of the United States~~

37.39. VAG Past Costs Claim — Reimbursement

a. In full and complete resolution of the claim of the United States for reimbursement of VAG Response Costs incurred on or before October 15, 2008, G-I shall pay EPA the sum of \$154,000 within 60 days after the ~~Consent Decree~~Plan Effective Date.

b. The cash distribution required by Paragraph ~~393939393839~~ ~~(-a)~~ above shall be Electronic Funds Transfer (“EFT” or wire transfer) to the U.S. Department of Justice account in accordance with current electronic funds transfer procedures. Payment shall be made in accordance with instructions provided to G-I by the Financial Litigation Unit of the Office of the United States Attorney’s ~~Office~~ for the District of New Jersey and shall reference Bankruptcy Nos. 01-30135 and 01-38790 and DOJ File Number 90-11-3-07425. Copies of all distributions and related correspondence shall be sent to the addresses set forth below:

Assistant Attorney General
Environment & Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, DC 20044-7611
Ref. DOJ File No. 90-11-3-07425

Sarah Meeks
Enforcement Counsel
Office of Environmental Stewardship
US Environmental Protection Agency, Region 1
One Congress Street, Suite 1100 (SES)
Boston, MA 02114

†

In full and complete resolution of the claim of Vermont for reimbursement of VAG Response Costs incurred on or before October 15, 2008, G-I shall pay Vermont the sum of \$16,800 within 60 days after the ~~Consent Decree~~Plan Effective Date.

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G-I shall make the payment required by Paragraph 39(d) by official bank check made payable to “State of Vermont – Environmental Cleanup Fund,” referencing the name and address of the party making the payment, and Site No. 1995-1825. G-I shall send the check to:

John Schmeltzer
VAG VT ANR Project Manager
VT DEC Waste Management Division
103 South Main Street, West Building
Waterbury, VT 05671-0404

The cash distribution required by Paragraph 3839, e shall be made [insert payment instructions]. A copy of the payment and related correspondence shall be sent to the address set forth below:

John D. Beling
Assistant Attorney General
Attorney General’s Office
109 State Street
Montpelier, VT 05609-10010

e.—

~~38-40.~~ VAG Future Response Costs Claim. In full and complete resolution of EPA’s and Vermont’s ~~claims for~~ VAG Future Response Costs Claims, G-I shall make payments for response actions or activities to the United States and Vermont as set forth in Paragraphs ~~40404040403940~~ and ~~42424242424142~~.

~~39-41.~~ VAG Future Costs Advance Payments. G-I shall make advance payments to EPA and/or Vermont upon EPA and/or Vermont’s presentation of a Letter of Intent (“LOI”), documenting its readiness to implement response actions for the six-month period following the date of the LOI. Each LOI shall identify the anticipated response actions/activities to be undertaken during the following six months, the timeframe for implementation, and the estimated cost of performing the response actions/activities. G-I shall provide funding to EPA and/or Vermont equal to the estimated cost set forth in the LOI, subject to the cost caps set forth

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in this Paragraph, within 45 days of G-I's receipt of the LOI. The advance payment ~~shall~~may be placed in a CERCLA Special Account or Vermont Environmental Contingency Fund Special Account for response actions/activities in connection with the VAG Site. Upon completion of the response actions or activities, EPA and/or Vermont shall provide documentation to G-I indicating that the actions are complete and providing an accounting of the response costs incurred.

a. Cost Cap in Settlement Years One through Four. The total amount of advance payments to EPA and/or Vermont in Settlement Years One through Four shall not exceed an annual cost cap of \$450,000 per year.

b. Settlement Year Five. G-I shall make advance payments to EPA and/or Vermont in Settlement Year Five, not to exceed a cost cap of \$200,000.

c. VAG Advance Payments Annual Rollover. If at the end of each Settlement Year, the VAG Advance Payments are less than the annual cost caps identified above, the annual cost cap in the subsequent year shall be increased by the amount of unexpended funds in the previous year, provided that EPA and/or Vermont have met (and continue to meet) the conditions for Advance Payments as set forth in Paragraph 37(B)(2). For example, if EPA and/or Vermont only receive \$400,000 in advance payments in Year Three, the annual cost cap for Year Four will be increased by \$50,000.

d. VAG Advance Payments Post Year Five. If the \$2,000,000 cap for VAG Advance Payments is not reached by the end of Settlement Year Five, then G-I shall continue to make advance payments after Settlement Year Five, until the full \$2,000,000 has been paid to EPA and/or Vermont. In no event shall G-I's total annual aggregate obligation to both EPA and Vermont to pay VAG Response Costs Advance Payments exceed \$2,000,000.

~~40-42. VAG Future Response Costs Claim. - VAG Reimbursement in Plan Dollars~~

a. VAG Reimbursement. In Settlement Year Six and later, G-I shall reimburse EPA and Vermont for their actual response costs incurred at or in connection with the VAG Site at the rate of 8.6 percent (i.e., for every thousand dollars that EPA or Vermont incurs in response costs, G-I shall reimburse EPA or Vermont eighty-six dollars) to the extent those costs are not inconsistent with the NCP or this Consent Decree. The procedures by which EPA and Vermont shall submit costs for reimbursement are set forth in Section ~~VII-VIII-VI-VH.~~

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~~b. Limitations on Reimbursement.~~

i. G-I shall have no obligation to make any payments to EPA and/or Vermont under this Paragraph ~~42424242424142~~ until ~~(+)~~ the aggregate ~~Future~~ VAG ~~Future~~ Response Costs incurred by EPA and Vermont exceed \$23,255,813, and G-I's obligation to reimburse EPA and Vermont for the first \$23,255,813 in VAG Future Response Costs shall be limited to the Advance Payments made pursuant to Paragraph ~~41414141414041~~.

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~~ii. b. Cost Cap in Settlement Years Six and Seven:~~ G-I's obligation during Settlement Years Six and Seven to reimburse EPA and Vermont for future response costs incurred at or in connection with the VAG Site shall be limited to an annual aggregate cap of \$450,000 (i.e. 8.6 percent of \$5,232,558).

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c. ~~Cost Cap in Settlement Years Eight and After:~~ G-I's obligation during Settlement Year Eight to reimburse EPA and Vermont for future response costs incurred at or in connection with the VAG Site shall be limited to an aggregate cap of \$700,000 (i.e., 8.6 percent of \$8,139,535). G-I's obligation during Settlement Year Nine to reimburse EPA and Vermont for future response costs incurred at or in connection with the VAG Site shall be limited to an aggregate cap of \$1,800,000 (i.e., 8.6 percent of \$20,930,232). G-I's obligation during

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Settlement Years Ten and thereafter to reimburse EPA and Vermont for future response costs incurred at or in connection with the VAG Site shall be limited to an aggregate cap of \$2,000,000 (i.e., 8.6 percent of \$23,255,813).

d. Costs in Excess of the Annual Cap. If EPA and Vermont's costs during any Settlement Year ~~result in exceedence of~~ exceed an annual cap as set forth above, the costs in excess of the cap may be invoiced during the following Settlement Year, provided however that there shall be no change in the cap for the following Settlement Year.

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~~41-43. The United States' EPA's~~ and Vermont's aggregate total ~~monetary claim against G-I~~ for VAG Future Response ~~Costs~~ Cost Claims shall be capped at \$300 million under this Consent Decree, ~~which, G-I shall be paid in Plan Dollars equal to~~ reimburse 8.6% ~~percent of EPA's and Vermont's VAG Future Response Cost Claims as set forth in this Consent Decree.~~ Accordingly, G-I's obligation to ~~make payments with respect to the~~ reimburse claims for VAG Future ~~VAG~~ Costs ~~Claim~~ shall terminate when the sum of the VAG Advance Payments (under Paragraph VAG Reimbursement (under Paragraph ~~424242424242~~) equals \$25,800,000 ~~-(i.e., 8.6 percent \$300,000,000).~~ In no event shall G-I be obligated to pay more than an aggregate amount of \$25,800,000 to the United States and/or Vermont with respect to VAG Future Response Costs. In the event that VAG Future Response Costs do not equal or exceed \$300,000,000, G-I shall only be required to reimburse the United States and Vermont for VAG Future Response Costs actually incurred. For example and by way of clarification, if the total of all VAG Future Response Costs equals \$100,000,000 then G-I's total liability for VAG Future Response Costs, including both VAG Advance Payments and VAG Reimbursements shall equal 8.6 percent of \$100,000,000 (i.e., \$8,600,000).

VII. MECHANISM FOR PAYMENT OF FUTURE VAG RESPONSE COSTS

A. Future United States' VAG Response Costs.

~~42-44.~~ On a periodic basis, ~~but not less than annually,~~ the United States shall submit to G-I an invoice for VAG Future Response Costs incurred by the United States that consists of a Region 1 cost summary, which is a line-item summary of costs in dollars by category of costs (including but not limited to payroll, travel, indirect costs, ~~and~~ contracts, and interagency agreement costs) incurred by on behalf of EPA, ~~DOJ, any other federal agency,~~ or their its amount equal to 8.6 percent of the response costs incurred during the invoiced period, subject to the limitations set forth in Paragraphs ~~40404040403940, 42424242424142,~~ and invoice, except as otherwise provided in Paragraph 52.

~~43-45.~~ [Need to Verify Payment mechanism] G-I shall make all payments required by Paragraphs ~~40404040403940~~ or ~~42424242424142~~ by official bank checks made payable to "EPA Superfund," referencing the name and address of the party making the payment, EPA Site/Spill ID Number 01ED and DOJ Case Number 90-11-3-07425. G-I shall send the checks to:

For Delivery by First Class Mail:

U.S. Environmental Protection Agency Superfund Payments
Cincinnati Finance Center
Accounts Receivable Branch
26 W Martin Luther King Dr.
MS-NWD
Cincinnati, OH 45268

Copies of all distributions and related correspondence shall be sent to the addresses set forth below:

Assistant Attorney General
Environment & Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, DC 20044-7611

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SUBJECT TO FED. R. EVID. 408 ~~54/130/09 REDLINE~~

Ref. DOJ File No. 90-11-3-07425

Sarah Meeks
Enforcement Counsel
Office of Environmental Stewardship
US Environmental Protection Agency, Region 1
One Congress Street, Suite 1100 (SES)
Boston, MA 02114

The United States shall notify G-I in writing of any modifications to the foregoing addresses or payment requirements.

~~44.46. Except as otherwise provided in this Consent Decree,~~ EPA may, in its sole discretion, direct any portion of any cash distribution received by EPA for the VAG Site Future Response Costs into a site-specific special account established to fund response actions at the VAG Site in the event that future work is anticipated at the VAG Site.

~~45.47.~~ G-I may contest payment of any VAG Future Response Costs submitted for reimbursement if it determines that the United States has made an accounting error or if it alleges the costs submitted for reimbursement are inconsistent with the NCP or the terms of this Consent Decree. Such objection shall be made in writing within sixty days of receipt of the invoice and must be sent to the United States pursuant to Section XVII (Notices and Submissions).

~~46.48.~~ Any such objection shall specifically identify the contested VAG Future Response Costs and the basis for objection. In the event of an objection, G-I shall pay all uncontested VAG Future Response Costs to the United States in the manner described in Paragraphs Simultaneously, G-I shall establish an interest-bearing escrow account in a federally-insured bank and remit to that escrow account funds equivalent to the amount of the contested VAG Future Response Costs. G-I shall send to the United States, as provided in Section XVII (Notices and Submissions), a copy of the correspondence that establishes and funds the escrow account,

including, but not limited to, the identity of the bank and bank account under which the escrow account is established as well as a bank statement showing the initial balance of the escrow account.

~~47-49.~~ Simultaneously with establishment of the escrow account, G-I shall initiate the Dispute Resolution procedures in Section XIV (Dispute Resolution). If the United States prevails in the dispute with respect to any costs, then within five days of the resolution of the dispute, G-I shall pay from the escrow account the disputed costs on which EPA prevailed (with accrued Interest) to the United States in the manner described in Paragraphs ~~4444444444344~~ and concerning any aspect of the contested costs, then the amount of the disputed costs on which G-I prevailed shall be disbursed to G-I from the escrow account. The dispute resolution procedures set forth in this Paragraph in conjunction with the procedures set forth in Section XIV (Dispute Resolution) shall be the exclusive mechanisms for resolving disputes regarding G-I's obligation to reimburse the United States for VAG Future Response Costs.

~~48-50.~~ In the event that the payments required by Paragraphs ~~41414141414041~~, within ninety days of G-I's receipt of the invoice, G-I shall pay Interest on the unpaid balance. The Interest to be paid on each payment shall begin to accrue on ~~the~~ ninety-first day following G-I's receipt of the invoice and shall accrue through the date of G-I's payment. Payments of Interest made under this Paragraph shall be in addition to such other remedies or sanctions available to the United States by virtue of G-I's failure to make timely payments. G-I shall make all payments required by this Paragraph in the manner described in Paragraph ~~45454545454445~~.

B. Future Vermont Response Costs.

~~49-51.~~ On a periodic basis, ~~but not less than annually,~~ Vermont shall submit to G-I an invoice of VAG Future Response Costs incurred by Vermont that consists of a Vermont ANR

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cost summary, which is a line-item summary of costs in dollars by category of costs (including but not limited to payroll, travel, indirect costs, and contracts) incurred by Vermont and its contractors. G-I shall reimburse Vermont in an amount equal to 8.6 percent of the response costs incurred during the invoiced period, subject to the limitations set forth in Paragraphs ~~43434343434243~~, within ninety days of G-I's receipt of each invoice, except as otherwise Paragraph ~~54545454545354~~.

~~50-52~~. G-I shall make all payments required by this Paragraph by official bank check(s) made payable to "State of Vermont – Environmental Cleanup Fund," referencing the name and address of the party making the payment, and Site No. 1995-1825. G-I shall send the check(s) to:

For Delivery by First Class Mail:

John Schmeltzer
VAG VT ANR Project Manager
VT DEC Waste Management Division
103 South Main Street, West Building
Waterbury, VT 05671-0404

Copies of all distributions and related correspondence shall be sent to the addresses set forth below:

John D. Beling
Assistant Attorney General
Attorney General's Office
109 State Street
Montpelier, VT 05609-10010

Vermont shall notify G-I in writing of any modifications to the foregoing addresses or payment requirements.

~~51-53~~. Except as otherwise provided in this Consent Decree, Vermont may, in its sole discretion, direct any portion of any cash distribution received into a site-specific special account

established to fund response activities at the VAG Site in the event that future work is anticipated at the VAG Site.

~~52-54.~~ 54. G-I may contest payment to Vermont of any VAG Future Response Costs if it determines that Vermont has made an accounting error or if it alleges that a cost item submitted for reimbursement is inconsistent with the NCP or the terms of this Consent Decree. Such objection shall be made in writing within sixty days of receipt of the invoice and must be sent to Vermont pursuant to Section XVII (Notices and Submissions).

~~53-55.~~ 55. Any such objection shall specifically identify the contested Vermont VAG Future Response Costs and the basis for objection. In the event of an objection, G-I shall within ninety days from the receipt of the invoice pay all uncontested Vermont VAG Future Response Costs in the manner described in Paragraph ~~52525252525152.~~ Simultaneously, G-I shall establish an escrow account in a federally-insured bank and remit to that escrow account funds equivalent to the amount of the contested VAG Future Response Costs. G-I shall send to Vermont, as provided in Section XVII (Notices and Submissions), a copy of the correspondence that establishes and funds the escrow account, including, but not limited to, information containing the identity of the bank and bank account under which the escrow account is established as well as a bank statement showing the initial balance of the escrow account.

~~54-56.~~ 56. Simultaneously with establishment of the escrow account, G-I shall initiate the Dispute Resolution procedures in Section XIV (Dispute Resolution). If Vermont prevails in the dispute, then within five days of the resolution of the dispute, G-I shall pay from the escrow account the amount of the disputed costs on which Vermont prevailed (with accrued Interest) to Vermont in the manner described in Paragraph ~~52525252525152.~~ If G-I prevails concerning any contested costs, then the amount of the disputed costs on which G-I prevailed shall be disbursed

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to G-I from the escrow account. The dispute resolution procedures set forth in this Paragraph in conjunction with the procedures set forth in Section XIV (Dispute Resolution) shall be the exclusive mechanisms for resolving disputes regarding G-I's obligation to reimburse Vermont for VAG Future Response Costs.

~~55-57.~~ In the event that the payments to Vermont required by Paragraphs not made within ninety days of G-I's receipt of the invoice, G-I shall pay Interest on the unpaid balance. The Interest to be paid shall begin to accrue on the ninety-first day after G-I receives the invoice and shall accrue through the date of G-I's payment. Payments of Interest made under this Paragraph shall be in addition to such other remedies or sanctions available to Vermont by virtue of G-I's failure to make timely payments under this Section. G-I shall make all payments required by this Paragraph in the manner described in Paragraph ~~52525252525152.~~

~~56-58.~~ In the event that both EPA and Vermont have submitted invoices to G-I seeking payment, which have not yet been paid, and the payment of both will cause the exceedence of an annual cap, G-I shall so inform EPA and Vermont, and shall thereafter follow such instructions as it shall receive from EPA concerning how payment within the cap limits should be made.

VIII. TERMS APPLICABLE TO THE FEDERAL AND STATE VAG NATURAL RESOURCE DAMAGE CLAIMS

~~57-59.~~ In settlement and satisfaction of all claims and causes of action of the VAG NRD Trustees for VAG NRD Claims, G-I shall pay to the VAG NRD Trustees the amount of \$850,000. ~~The amounts of the NRD-natural resource damages distributions imbursement required by this Paragraph was~~ were determined based on an allowed claim settlement amount of \$9,883,721 ~~times multiplied by an 8.6 percent payout rate. G-I shall make the payment distributions required~~ Paragraph on the following schedule set forth in subparagraphs (a) through (i) ~~of this~~

- a. During the first 60 days of Settlement Year One, the sum of \$50,000.

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- b. During the first 60 days of Settlement Year Two, the sum of \$50,000.
- c. During the first 60 days of Settlement Year Three, the sum of \$50,000.
- d. During the first 60 days of Settlement Year Four, the sum of \$50,000.
- e. During Settlement Year Five, the sum of \$300,000, with \$150,000 to be paid during the first 60 days of the Settlement Year, and the remaining \$150,000 to be paid within 240 days of the beginning of the Settlement Year.
- f. During the first 60 days of Settlement Year Six, the sum of \$50,000.
- g. During the first 60 days of Settlement Year Seven, the sum of \$50,000.
- h. During the first 60 days of Settlement Year Eight, the sum of \$50,000.
- i. During the first 60 days of Settlement Year Nine, the sum of \$200,000.

~~Payments-Distributions required by subparagraphs (a)-(i) shall be made as follows: [fill in instructions].~~ Payments received by the VAG NRD Trustees shall be deposited into the DOI Natural Resource Damage Assessment and Restoration Fund, Account No. ~~14X5-198.~~ A separate, site-specific numbered account for the VAG Site ("VAG Restoration Account") has been or will be established within DOI's Natural Resource Damage Assessment and Restoration Fund. The trustees shall use the funds in the VAG Restoration Account, including all interest earned on such funds, for restoration and/or assessment activities at or in connection with the VAG Site.

Copies of all distributions to the VAG NRD Trustees and related correspondence to the United States shall be sent to:

Department of the Interior

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Natural Resource Damage Assessment and Restoration Program
Attn: Restoration Fund Manager
1849 C St. NW
Mailstop
Washington, DC 20240

And

U.S. Department of the Interior
Office of the Solicitor--Environmental Restoration Branch
ATTN: NRDAR Bankruptcy Coordinator
1849 C St., NW
Mail Stop 3210
Washington, D.C. 20240

**IX. TERMS APPLICABLE TO FEDERAL MONETARY CLAIMS AT THE
GENERATOR SITES**

~~58-60.~~ The United States' claims with respect to the Generator Sites shall be fully satisfied and liquidated as specified below.

~~59-61.~~ G-I shall pay EPA and NOAA the sums set forth in the following Generator Payment Table within 60 days after the ~~Consent Decree~~Plan Effective Date. The amounts of payments required were determined based on allowed claim settlement amounts for each Generator Site times an 8.6% payout rate.

~~60-62.~~ Generator Payment Table

<u>Site</u>	<u>Agency</u>	<u>Payment</u>
68 th Street Dump Site	EPA	\$8,134
Colesville Municipal Landfill Site	EPA	\$22,321
Kin-Buc Landfill Site	EPA	\$783
	NOAA	\$2469
Maryland Sand, Stone, and Gravel <u>Site</u>	EPA	\$24,660

Novak Sanitary Landfill Site	EPA	\$9,385
Operating Industries, Inc. Site	EPA	\$11,402
Pioneer Smelting Site	EPA	\$12,900
Tri-Cities Barrel Co., Inc. Site	EPA	\$11,928
Weld County Disposal Site	EPA	\$633

~~64-63.~~ Cash Distributions to EPA for the Generator Sites: Cash distributions to the United States for EPA shall be made by FedWire Electronic Funds Transfer (“EFT” or wire transfer) to the U.S. Department of Justice account in accordance with current electronic funds transfer procedures. Payment shall be made in accordance with instructions provided to G-I by the Financial Litigation Unit of the Office of the United States Attorney’s ~~Office~~ for the District of New Jersey and shall reference Bankruptcy Petition Nos. 01-30135 and 01-3 8790 and DOJ File Number 90-11-3-07425. G-I shall transmit written confirmation of such payments to the Department of Justice and EPA at the addresses specified in Paragraph XVII. EPA may, in its sole discretion, direct any portion of cash distribution it receives for the Generator Sites to the Hazardous Substances Trust Fund and/or into a site-specific special account established to fund response actions at such Generator Site in the event that future work is anticipated at such Site.

~~62-64.~~ G-I shall pay \$2,469 in reimbursement for Past Costs incurred by NOAA, as set forth in Paragraph ~~62-62-62-62-61-62~~. The NOAA Past Costs shall be paid by EFT to the U.S. Department of Justice lockbox, referencing DOJ File Number 90-11-3-07425 and the United States Attorney's Office file number, in accordance with the EFT instructions that shall be provided by the United States Attorney's office after lodging of this Decree.

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~~63-65.~~ With respect to the Generator Sites, copies of all distributions to EPA and NOAA

and related correspondence to the United States shall be sent to:

Assistant Attorney General
Environment & Natural Resources Division
U.S. Department of Justice
10th & Pennsylvania Ave., N.W.
Washington, DC 20530
Ref. DOJ File No. 90-11-3-07425

and with respect to EPA distributions:

US EPA
Cincinnati Finance Center
Accounts Receivable Branch
26 W Martin Luther King Dr.
MS-NWD
Cincinnati, OH 45268

and

David Smith-Watts, Esq.
U.S. Environmental Protection Agency
Ariel Rios South Building
MS 2272A
1200 Pennsylvania Ave., N.W.
Washington, D.C. 20460

and with respect to NOAA distributions:

NOAA/NOS/OR&R
ATTN: Kathy Salter, DARRF Manager
1305 East West Highway
SSMC4, Room 9331
Silver Spring, MD 20910-3281

and

M.E. Rolle, Attorney-Advisor
National Oceanic and Atmospheric Administration
Office of General Counsel for Natural Resources
263 13th Ave. S., Suite 177
St. Petersburg, FL 33701

X. TERMS APPLICABLE TO FEDERAL MONETARY CLAIMS FOR

~~64-66. Additional Sites. [need to add language] In consideration for the~~

~~Acknowledgement of Liability Linden Agreement attached hereto as Attachment 6, the United States withdraws such portion of its Proof of Claim concerning the Linden Sites. [RESERVED]~~

XI. VAG SITE RECORDKEEPING AND REPORTING REQUIREMENTS

~~65-67.~~ In addition to any other recordkeeping and reporting requirement of this Consent Decree, the Trustee shall submit written quarterly progress reports for wWork at the VAG Site as specified in the SOW.

~~66-68.~~ If requested by EPA or Vermont, the Trustee shall also provide oral briefings to EPA and Vermont discussing the progress of the Work ~~or the response activities undertaken by EPA or Vermont~~ in connection with the VAG Site.

~~67-69.~~ The Trustee shall notify EPA and Vermont of any change in the schedule described in the quarterly progress reports for the performance of any activity, including, but not limited to, data collection and implementation of work plans, no later than seven days prior to the performance of the activity.

XII. EPA APPROVAL OF PLANS AND OTHER SUBMISSIONS FOR THE VAG SITE

~~68-70.~~ After review of any plan, report or other item that is required to be submitted for approval pursuant to this Consent Decree, EPA, in consultation with Vermont, shall:

- a. approve the submission, in whole or in part;
- b. approve the submission upon specified conditions;
- c. modify the submission to cure the deficiencies;
- d. disapprove the submission, in whole or in part, directing that the Trust, as applicable, modify the submission; or

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e. any combination of the above,

provided, however, that EPA shall not modify a submission without first providing the Trust at least one notice of deficiency and an opportunity to cure within thirty days.

~~69-71.~~ In the event of approval, approval upon conditions, or modification by EPA, pursuant to Paragraph ~~70707070706970~~(a), (b), or (c), the Trust shall proceed to take any action plan, report, or other item, as approved or modified by EPA, subject only to the right to invoke the Dispute Resolution procedures set forth in Section XIV (Dispute Resolution) with respect to the modifications or conditions made by EPA.

~~70-72.~~ Resubmission of Plans. Upon receipt of a notice of disapproval pursuant to Paragraph ~~70707070706970~~(d), the Trustee shall, within 21 days or such longer time as specified notice of disapproval, correct the deficiencies and resubmit the plan, report, or other item for approval. Notwithstanding the receipt of a notice of disapproval pursuant to Paragraph Trustee shall proceed, at the direction of EPA, to take any action required by any non-deficient portion of the submission.

~~71-73.~~ In the event that a resubmitted plan, report or other item, or portion thereof, is disapproved by EPA, EPA may again require the Trust to correct the deficiencies, in accordance with Paragraph ~~72727272727172~~. EPA also retains the right to modify or develop the plan, report The Trust shall implement any such plan, report, or item as modified or developed by EPA, subject only to the right to invoke the procedures set forth in Section XIV (Dispute Resolution).

~~72-74.~~ If upon resubmission, a plan, report, or item is disapproved or modified by EPA due to a material defect, the Trust shall be deemed to have failed to submit such plan, report, or item timely and adequately unless the Trust invokes the dispute resolution procedures set forth in Section XIV (Dispute Resolution) and EPA's action is overturned pursuant to that Section. All

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plans, reports, and other items required to be submitted to EPA under this Consent Decree shall, upon approval or modification by EPA, become incorporated in this Consent Decree and enforceable as if fully set forth herein.

~~73. Provided that the Trust submits any required work plans, health and safety plans, or QAPPs not less than fourteen Days in advance of the scheduled start date for any Work to which the plans apply, EPA shall be deemed to have approved the plans as submitted unless EPA informs the Trust not less than five days prior to the scheduled start of the Work that EPA intends to approve the plan upon conditions, modify the plan, or disapprove the plan.~~

~~75. The Trust shall not commence any Work until all Wwork Pplans related to that Work have been approved by EPA.~~

XIII. FORCE MAJEURE

~~74-76.~~ If any event occurs that causes or may cause a delay or impediment to performance of or compliance with any provision of this Consent Decree (e.g., a condition that would require performance in an unsafe manner), and that the Trustee believes qualifies as an event of Force Majeure, the Trustee shall notify EPA in writing as soon as practicable, but in any event within ~~thirty (30)~~ ~~forty-five~~ ~~this seems way too long same below~~ ~~45~~ days of when the Trustee first knew of the event or should have known of the event by the exercise of reasonable diligence. In this notice, the Trustee shall specifically reference this Paragraph ~~767676767576~~ the anticipated length of time the delay may persist, the cause or causes of the delay, the measures taken and/or to be taken by the Trustee to prevent or minimize the delay and the schedule by which those measures will be implemented. The Trustee shall adopt all reasonable measures to avoid or minimize such delays.

~~75.77.~~ Failure by the Trustee to substantially comply with the notice requirements of Paragraph ~~76767676767576~~ shall render this Section XIII voidable by the United States as to the for which the Trustee has failed to comply with the notice requirements. If so voided, this Section shall be of no effect as to the particular event involved.

~~76.78.~~ The United States shall notify the Trustee in writing regarding its agreement or disagreement with any claim of a Force Majeure event within ~~thirty (30)~~ **forty-five (45)** days of receipt of each Force Majeure notice provided under Paragraph ~~76767676767576~~.

~~77.79.~~ If the United States, in consultation with Vermont, agrees that the delay or impediment to performance has been or will be caused by circumstances beyond the control of the Trust, including any entity controlled or contracted by the Trust, and that the Trust could not have prevented the delay by the exercise of reasonable diligence, the Parties shall stipulate to an extension of the required deadline(s) for all requirement(s) affected by the delay by a period equivalent to the delay actually caused by such circumstances, or such other period as may be appropriate in light of the circumstances. ~~Such stipulation may be filed as a modification to this Consent Decree by agreement of the Parties pursuant to the modification procedures set forth in Section XXIV.~~

~~78.80.~~ If the United States, in consultation with Vermont, does not agree that the delay or impediment to performance has been or will be caused by circumstances beyond the control of the Trust, including any entity controlled or contracted by them, the position of the United States on the Force Majeure claim shall become final and binding upon the Trust, unless the Trust invokes Dispute Resolution within ~~thirty (30) d~~ Days after receiving written notification that the United States does not agree that a force majeure event has occurred. In the event that the United States and Vermont are unable to reach an agreement on the governments' position, after

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opportunity for consultation, the position of the United States shall become the final position of the governments with regard to the Trust's Force Majeure claim.

~~79-81.~~ If the Trust prevails in Dispute Resolution, then the Trust shall be excused as to such event(s) for the period of time equivalent to the delay caused by such circumstances ~~or such other period as may be determined through Dispute Resolution.~~

~~80-82.~~ The Trust shall bear the burden of proving that any delay of any requirement(s) of this Consent Decree was caused by or will be caused by circumstances beyond its control, including any entity controlled or contracted by the Trust, and that it could not have prevented the delay by the exercise of reasonable diligence. The Trust shall also bear the burden of proving the duration and extent of any delay(s) attributable to such circumstances. An extension of one compliance date based on a particular event may, but does not necessarily, result in an extension of a subsequent compliance date or dates.

~~81-83.~~ As part of the resolution of any matter submitted to Dispute Resolution under this Section, the Parties by agreement, or the Court by order, may extend or modify the schedule for completion of the Work to account for the delay in the Work that occurred as a result of any delay or impediment to performance on which an agreement by the Parties or approval by the Court is based.

XIV. DISPUTE RESOLUTION FOR THE ~~for VAG SITE~~ ~~ite?~~

~~82-84.~~ Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising between ~~the United States, Vermont~~ plaintiffs and ~~or among the United States, Vermont, G-I,~~ and/or the Trustee, or ~~any subset of them~~, under or with respect to this Consent Decree.

~~83-85.~~ Informal Dispute Resolution: Any dispute subject to Dispute Resolution under Consent Decree shall first be the subject of informal negotiations. The dispute shall be considered to have arisen when the party invoking Dispute Resolution (“Invoking Party”) sends the party against which Dispute Resolution is invoked (“Responding Party”) a written Notice of Dispute, which shall state clearly the matter in dispute. The Notice of Dispute shall simultaneously be sent to any Party not a Party to the Dispute (“Collateral Party”). The period of informal negotiations shall not exceed ~~30thirty (30) Days~~ from the date the dispute arises, unless that period is modified by written agreement. If the Parties cannot resolve a dispute by informal negotiations, then the position advanced by EPA or by the Responding Party, if EPA does not advance a position on the dispute, shall be considered binding unless, within ~~30thirty Days (30 days)~~ after the conclusion of the informal negotiation period, the Invoking Party invokes formal dispute resolution procedures as set forth below.

~~84-86.~~ Formal Dispute Resolution: The Invoking Party may only invoke formal dispute resolution procedures, within the time period provided in Paragraph ~~85858585858485,~~ by Responding Party and any Collateral Parties a written Statement of Position regarding the matter in dispute. The Invoking Party’s Statement of Position shall include, but need not be limited to, any factual data, analysis, or opinion supporting its position and any supporting documentation on which it relies.

~~85-87.~~ The Responding Party shall serve its Statement of Position within thirty (30) receipt of the Invoking Party’s Statement of Position. The Responding Party’s Statement of Position shall include, but need not be limited to, any factual data, analysis, or opinion supporting its position and any supporting documentation on which it relies. Any Collateral Parties may, but need not, serve a Statement of Position within ~~30thirty (30) Days~~ of receipt of

Party's Statement of Position. Any Collateral Party Statement of Position shall include, but need not be limited to, any factual data, analysis, or opinion supporting its position and any supporting documentation on which it relies. The position advanced by EPA or by the Responding Party, if EPA does not advance a position on the dispute, shall be considered binding unless

The Party files a motion for judicial review of the dispute in accordance with Paragraph

~~86-88.~~ 89. The Invoking Party may seek judicial review of the dispute by filing with the Court and serving on the Responding Party and any Collateral Parties, in accordance with Section XVII of this Consent Decree (Notices), a motion requesting judicial resolution of the dispute. The motion must be filed within ~~30 thirty Days (30 days)~~ of receipt of the Responding Party's Statement of Position. The motion shall include copies of all Statements of Position served by any Party, along with any supporting documentation, and the Statements of Position shall constitute the complete written submission to the Court on the dispute. The motion shall set forth the relief requested and any schedule within which the dispute must be resolved for orderly implementation of the Consent Decree.

~~87-89.~~ 89. All petitions for determination of disputes arising under Section VI, VII, VIII, IX and X of this Consent Decree shall be filed with the Bankruptcy Court for resolution. All in accordance with the eOrder of the United States District Court for the District of New Jersey dated February 17, 2009 in Civil Case No. 08-5470 (SGW), all other petitions for resolving disputes arising under this Consent Decree shall be filed with the United States District Court for the District of New Jersey, ~~in Civil Case No. 08-ev-05470 (SGW) (the "District Court").~~

90. Except as otherwise provided in this Consent Decree, in any dispute for which judicial review is sought, the Invoking Party shall bear the burden of demonstrating that its position should prevail according to the standard imposed by applicable law.

~~91.~~

~~88.~~

~~_____~~ The invocation of dispute resolution procedures under this Section shall not, by itself, extend, postpone, or affect in any way any obligation of G-I or the Trust under this Consent Decree, unless and until final resolution of the dispute so provides. ~~If dispute resolution is invoked regarding the performance of an obligation set forth in Section V and performance of the obligation is suspended pending dispute resolution, the time limitation set forth in Section IV for the performance of the obligation which is disputed shall be extended by the amount of time which elapses between the invocation of dispute resolution and the final resolution of the dispute. The invocation of dispute resolution procedures under this Section shall not otherwise, by itself, extend, postpone, or affect in any way any obligation of G-I or the Trust under this Consent Decree, unless and until final resolution of the dispute so provides.~~

~~89. _____~~

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XV. VAG SITE INFORMATION COLLECTION AND RETENTION

~~92. The Trust shall use best efforts to secure from the owner of the VAG Site an agreement to provide access thereto to the Trust and its contractors, as well as to EPA, Vermont and their representatives (including contractors), for the purpose of conducting any activity related to this Consent Decree. For purposes of this Paragraph, "best efforts" includes the payment of reasonable sums of money in consideration of access. The United States and/or Vermont may, as they deem appropriate, assist the Trust in obtaining access as required by this Paragraph. Settling G-I Defendants shall reimburse the United States and/or Vermont for all costs incurred by the United States and/or Vermont in obtaining such access, land/water use~~

~~restrictions, and/or the release/subordination of prior liens or encumbrances including, but not~~
~~paid or just compensation. The Trust, including its contractors, shall not take any steps to~~
~~impede EPA's or Vermont's access to the VAG Site.~~

~~90-93.~~ 93. Until five years after completion of the ~~W~~Work described in Section V, G-I and the Trustee shall retain, and shall instruct their contractors and agents to preserve, all non-identical copies of documents, records, or other information (including documents, records, or other information in electronic form) in their or their contractors' or agents' possession or control, or that come into their or their contractors' or agents' possession or control, and that relate in any manner to the Trust's performance of its obligations under this Consent Decree. Such documents, records, or other information may be kept in electronic form. This information-retention requirement shall apply regardless of any contrary corporate or institutional policies or procedures. At any time during this information-retention period, upon request by the United States or Vermont, G-I or the Trustee shall provide copies of any non-privileged documents, records, or other information required to be maintained under this Paragraph.

~~91-94.~~ 94. After the conclusion of the information-retention period provided in the preceding Paragraph, G-I and the Trustee shall notify the United States and Vermont at least ninety ~~D~~days before destroying any documents, records, or other information subject to the requirements of the preceding Paragraph and, upon request by the United States or Vermont, G-I or the Trustee shall deliver the requested non-privileged documents, records, or other information to EPA, DOI, or Vermont ANR.

~~92-95.~~ 95. G-I or the Trustee may assert that certain documents, records, or other information is privileged under the attorney-client privilege or any other privilege recognized by federal or ~~state-Vermont~~ law. If G-I or the Trustee asserts such a privilege, it shall provide the following for

CONFIDENTIAL SETTLEMENT MATERIAL ~~US G-I JOINT-REVISED DRAFT OF 3/31/09 NO. 1~~
SUBJECT TO FED. R. EVID. 408 ~~54/130/09 REDLINE~~

each item withheld: (1) the title of the document, record, or information, including sampling and emissions data; (2) the date of the document, record, or information; (3) the name and title of each author of the document, record, or information; (4) the name and title of each addressee and recipient; (5) a description of the subject of the document, record, or information; and (6) the privilege asserted. However, no final documents, records or other information that G-I or the Trustee is explicitly required to create or generate to satisfy a requirement of this Consent Decree shall be withheld on the grounds of privilege.

~~93.~~ G-I or the Trustee may also assert that information required to be provided under this Section is protected as Confidential Business Information (“CBI”) under 40 C.F.R. Part 2 and/or ~~[Insert Applicable Vermont Provision]~~. As to any information that G-I seeks to protect as CBI, G-I shall follow the procedures set forth in 40 C.F.R. Part 2, ~~and/or [Insert Applicable Vermont Provision]~~. NO CBI analog in VT

~~94-96.~~ ~~F~~This Consent Decree in no way limits or affects any right of entry and inspection, or any right to obtain information, held by the United States or Vermont pursuant to applicable federal or state laws, regulations, or permits, nor does it limit or affect any duty or obligation of G-I to maintain documents, records, or other information imposed by applicable federal or state laws, regulations, or permits. However, no emissions data or sampling results generated pursuant to this Consent Decree shall be claimed as CBI.

XVI. COSTS.

~~95-97.~~ Except as otherwise provided in this Consent Decree, ~~F~~the Parties shall bear their own costs of this action, including attorneys’ fees, ~~except that the United States and Vermont shall be entitled to collect their costs (including reasonable attorneys’ fees) incurred in any action necessary to collect any portion of the payments required to be made by G-I pursuant to Section~~

XVII. NOTICES

96-98. Unless otherwise specified herein, whenever notifications, submissions, or communications are required by this Consent Decree, they shall be made in writing and mailed or hand delivered to the following addresses:

As to the United States:

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U.S. Department of Justice, ENRD:

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Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611, Ben Franklin Station
Washington, D.C. 20044-7611
Re: DOJ No. 90-5-2-1-08656

EPA Region 1: and

Sarah Meeks
Enforcement Counsel
US Environmental Protection Agency
One Congress Street, Suite 1100 (SES)
Boston, MA 02114

What about EPA Region 2:

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U.S. EPA Region 2
Office of Regional Counsel
290 Broadway - 17th Floor
New York, NY 10007-1866

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EPA Headquarters:

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David Smith-Watts, Esq.
U.S. Environmental Protection Agency
Ariel Rios South Building
MS 2272A
1200 Pennsylvania Ave., N.W.
Washington, D.C. 20460

CONFIDENTIAL SETTLEMENT MATERIAL ~~US G-1 JOINT REVISED DRAFT OF 3/31/09 NO. 1~~
SUBJECT TO FED. R. EVID. 408 ~~54/130/09 REDLINE~~

~~and (only if)~~ For notifications, submissions, or communications related to Natural Resource

Damages):

DOI:

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Office of the Solicitor ~~Environmental Restoration Branch~~
U.S. Department of the Interior
~~address~~ 1849 C St NW
MS 3210
Washington, DC 20240

Add NOAA:

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M.E. Rolle, Attorney-Advisor
National Oceanic and Atmospheric Administration
Office of General Counsel for Natural Resources
263 13th Ave. S., Suite 177
St. Petersburg, FL 33701

As to the State of Vermont:

~~As to the State of Vermont (only if)~~ For notifications, submissions, or communications related to
the VAG Site):

John Schmeltzer
VAG VT ANR Project Manager
VT DEC Waste Management Division
103 South Main Street, West Building
Waterbury, VT 0567 1-0404

and

John D. Beling
Assistant Attorney General
Attorney General's Office
109 State Street
Montpelier, VT 05609-1001

As to G-I:

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Legal Department
G-I Holdings Inc.
Attn: Celeste Wills or Environmental Counsel
1361 Alps Road
Wayne, NJ 07470

99. Any Party may, by written notice to the other Parties, change its designated notice recipient or notice address provided above. Notices submitted by mail pursuant to this Section XIV shall be deemed submitted upon mailing, unless otherwise provided in this Consent Decree or by mutual agreement of the Parties in writing.

~~97.~~

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~~XVIII. H-I~~ COVENANTS BY THE UNITED STATES

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A. Section 303 of the CAA and Section 7003 of RCRA.

~~[#1]~~ This Consent Decree resolves all civil causes of action ~~aims of the~~
United States on behalf of EPA that were alleged in the Complaint for
declaratory and injunctive relief pursuant to Section 303 of CAA, 42
U.S.C. §7603, and Section 7003 of RCRA, 42 U.S.C. §6973 for conditions
at, on, under, or emanating from the VAG Site.

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100.

~~[#2]~~ This Consent Decree is not a permit, or a modification of any permit, under any
federal, state, or local laws or regulations.

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~~B. Covenants Not to Sue~~

101. ~~[#3]~~

B. Covenants Not to Sue

102. Generator Sites. With respect to the Generator Sites (including releases of substances from any portion of the Generator Sites, and all areas affected by natural migration of such substances from the Generator Sites) and except as specifically provided in Section (Reservation of Rights), the United States, on behalf of EPA, covenants not to sue or assert any civil claims or causes of action against G-I, ACI, and the "G Holdings Entities" pursuant to Sections 106 or 107 of CERCLA, 42 U.S.C. §§ 9606 or 9607; Section 7003 of the RCRA, 42 U.S.C. § 6973; or any liabilities or obligations asserted in the United States' Proofs of Claim.

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~~— [#4] Kin-Buc Landfill Superfund Site. With respect to the Kin-Buc Landfill Superfund Site (including releases of hazardous substances from any portion of the Kin-Buc Landfill Superfund Site, and all areas affected by natural migration of such substances from the Kin-Buc Landfill Superfund Site) and except as specifically provided in Section XXII-#- (Reservation of Rights), the United States, on behalf of NOAA, covenants not to sue or assert any civil claims or causes of action against G-I, ACI, and the G Holdings Entities pursuant to Sections 106 or 107 of CERCLA, 42 U.S.C. §§ 9606 or 9607, Section 7003 of RCRA , 42 U.S.C. § 6973; or any liabilities or obligations asserted in the United States' Proofs of Claim.~~

103.

~~— [#5] VAG Site. With respect to the VAG Site (including releases of hazardous substances from any portion of the VAG Site, and all areas affected by natural migration of such substances from the VAG Site), and except as specifically provided in Section XXXII-##- Reservation of Rights, the United States, on behalf of EPA and DOI covenants not to sue or assert any civil claims or causes of action against G-I, ACI, the G Holdings Entities, and the ISP~~

Entities, pursuant to Sections 106 and 107 of CERCLA, 42 U.S.C. §§ 9606 or 9607; RCRA, 42 U.S.C. § 6901 *et seq.*; CAA, 42 U.S.C. § 7401 *et seq.*; FWPCA, 33 U.S.C. § 1251 *et seq.*; or any liabilities or obligations which were asserted in the United States' Proofs of Claim.

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104.

~~—[#6] Covered G-I Derivative Entities. Without in any way limiting the covenants not to sue (and the reservations thereto) set forth in pParagraphs ~~insert reference to covenant paragraphs for Generator, Kin Buc, and VAG~~102, 103, and 104 above, such covenant not to sue (and the reservations thereto) shall also apply to G-I and ACI's, officers, directors, employees, trustees, future successors, and future assigns ("Covered G-I Derivative Entities"), but only to the extent that the alleged liability of any Covered G-I Derivative Entity is based solely on its status and in its capacity as a Covered G-I Derivative Entity and not to the extent the liability arose independently.~~

105.

~~—[#7] Covered G Holdings Derivative Entities. Without in any way limiting the covenants not to sue (and the reservations thereto) set forth in pParagraphs ~~insert reference to covenant paragraphs for Generator, KINBUC, and VAG~~102, 103 and 104 above, such covenant not to sue (and the reservations thereto) shall also apply to the G Holdings Entities' officers, directors, employees, trustees, future successors, and future assigns ("Covered G Holdings Derivative Entities"), but only to the extent that the alleged liability of any Covered G Holdings Derivative Entity is based solely on its status and in its capacity as a Covered G Holdings Derivative Entity and not to the extent the liability arose independently.~~

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~~—107. [#8] Covered ISP Derivative Entities. Without in any way limiting the~~

~~sue (and the reservations thereto) set forth in Paragraphs paragraphs 102, 103 and 104 insert~~
~~covenant not to sue (and the reservations thereto) shall also apply to the ISP Entities' officers,~~
~~directors, employees, trustees, future successors, and future assigns ("Covered ISP Derivative~~
~~Entities"), but only to the extent that the alleged liability of any Covered ISP Derivative Entity is~~
~~based solely on its status and in its capacity as a Covered ISP Derivative Entity and not to the~~
~~extent the liability arose independently.~~

XIX. COVENANTS BY VERMONT

~~108. [#9] COVENANTS BY VERMONT~~

~~[#9] In consideration of all of the foregoing, including the payments that will be made,~~
~~and except as specifically provided in Section XX (Reservation of Rights) Paragraphs []],~~
~~Vermont covenants not to bring any Claim (as defined in the Plan of Reorganization), file a civil~~
~~action, seek or issue any orders, or take any other administrative or other action against G-I, ACI,~~
~~the G Holdings Entities, or the ISP Entities, pursuant to Sections 106 or 107 of CERCLA, 42~~
~~U.S.C. §§ 9606 or 9607, or under 10 V.S.A. §§1259, 1274, 6610a, 6615 and 6616, or any other~~
~~federal or state law, including common law, with respect to the VAG Site.~~

~~109. [#10] COVENANTS BY VERMONT~~

~~[#10] Covered G-I Derivative Entities. Without in any way limiting the covenants not to~~
~~sue (and the reservations thereto) set forth in Paragraphs [insert reference to VT covenant~~
~~paragraph] above, such covenant not to sue (and the reservations thereto) shall also apply to G-I~~
~~and ACI's, officers, directors, employees, trustees, future successors, and future assigns~~
~~("Covered G-I Derivative Entities"), but only to the extent that the alleged liability of any~~
~~Covered G-I Derivative Entity is based solely on its status and in its capacity as a Covered G-I~~

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~~Derivative Entity and not to the extent the liability arose independently.~~

~~(and the reservations thereto) set forth in pParagraphs 108[insert reference to VT covenant]~~
~~the reservations thereto) shall also apply to the G Holding Entities' officers, directors,~~
~~employees, trustees, future successors, and future assigns ("Covered G Holdings Derivative~~
~~Entities"), but only to the extent that the alleged liability of any Covered G Holdings Derivative~~
~~Entity is based solely on its status and in its capacity as a Covered G Holdings Derivative Entity~~
~~and not to the extent the liability arose independently.~~

~~111. Covered G Holdings Derivative Entities. Without in any way limiting the~~
~~covenants not to sue (and the reservations thereto) set forth in pParagraphs 108[insert reference~~
~~to VT covenant]~~ above, such covenant not to sue (and the reservations thereto) shall also apply to
~~the G Holding Entities' officers, directors, employees, trustees, future successors, and future~~
~~assigns ("Covered G Holdings Derivative Entities"), but only to the extent that the alleged~~
~~liability of any Covered G Holdings Derivative Entity is based solely on its status and in its~~
~~capacity as a Covered G Holdings Derivative Entity and not to the extent the liability arose~~
~~independently.~~

~~110. 112. Covered ISP Derivative Entities. Without in any way limiting the covenants~~
~~not to sue (and the reservations thereto) set forth in Paragraphs [insert reference to the VT~~
~~covenant]~~ above, such covenant not to sue (and the reservations thereto) shall also apply to the
~~ISP Entities' officers, directors, employees, trustees, future successors, and future assigns~~
~~("Covered ISP Derivative Entities"), but only to the extent that the alleged liability of any~~
~~Covered ISP Derivative Entity is based solely on its status and in its capacity as a Covered ISP~~
~~Derivative Entity and not to the extent the liability arose independently.~~

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111.

of G-I and ACI. Vermont's Proofs of Claim 1157, 1158 and 1159 shall be deemed to be satisfied in full. Moreover, Vermont shall be deemed to have filed a proof of claim for matters addressed in this Consent Decree, which proof of claim shall be deemed satisfied in full in accordance with the terms of this Consent Decree.

~~113.~~ Vermont waives its right and covenants not to object to any Plan of Reorganization of G-I and ACI. Vermont's Proofs of Claim 1157, 1158 and 1159 shall be deemed to be satisfied in full. Moreover, Vermont shall be deemed to have filed a proof of claim for matters addressed in this Consent Decree, which proof of claim shall be deemed satisfied in full in accordance with the terms of this Consent Decree.

112. ~~114.~~ Vermont covenants not to object to approval by the Bankruptcy Court of any proposed settlement among G-I and any insurance carriers or seek to recover any proceeds of any settlement between G-I and its insurance carriers or any judgment obtained by G-I against its insurance carriers. Vermont hereby assigns to G-I any rights which Vermont may have against any of G-I's insurance carriers that may have liability to G-I with respect to the VAG Site.

~~115.~~ 113. Vermont covenants not to assert any claims or commence any action against the Trustee or the Trust other than to enforce the terms of this Consent Decree.

~~XX. III.~~ RESERVATION OF RIGHTS

~~116.~~ 114. Except as otherwise provided in Section ~~XVIII~~ (Covenants by the United States) and Section ~~XIX~~ (Covenants by Vermont), the United States, Vermont, G-I, ACI, the Covered G-I Derivative Entities, the G Holdings Entities, the Covered G Holdings Derivative Entities, the ISP Entities, and the Covered ISP Derivative Entities expressly reserve all claims, demands and causes of action either judicial or administrative, past, present or future, at law or in

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equity, that the United States, Vermont or G-I may have against all other persons, firms, corporations, entities, or predecessors of G-I for any matter arising at or relating in any manner to the sites, causes of action, or claims addressed herein. Except as otherwise provided herein, this Consent Decree shall not be construed to create rights in, or grant any cause of action to, any third party not a party to this Consent Decree.

~~115.~~ Notwithstanding the foregoing, the covenants not to sue contained in this Consent Decree shall not apply to, nor affect any action based on, a failure to meet a requirement of this Consent Decree or criminal liability. In addition, the parties reserve all rights and defenses they may have with respect to conduct of G-I, ACI, the Covered G-I Derivative Entities, the G Holdings Entities, the Covered G Holdings Derivative Entities, the ISP Entities and the Covered ISP Derivative Entities at the VAG Site and the Generator Sites occurring after the Lodging Date of this Consent Decree to the extent such conduct would give rise to liability under Sections 106 and 107(a)(1)-(4) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a)(1)-(4); Section 7003 of RCRA, 42 U.S.C. §6973; Section 303 of CAA, 42 U.S.C. § 7603; or Sections 311 and 504 of the FWPCA, 33 U.S.C. §§ 1321 and 1364. Nothing in this Consent Decree shall affect or limit such rights and defenses.

~~116.~~ Nothing in this Consent Decree shall be deemed to limit the authority of the United States to take response action under Section 104 of CERCLA, 42 U.S.C. § 9604, or any other applicable law or regulation, or to limit the authority of Vermont to respond to releases and threats of releases of hazardous substances into the environment at and from the VAG Site pursuant to 10 V.S.A. §§ 1259, 1274, 6601a, 6615 and 6616 or any other applicable law or regulation, or to alter the applicable legal principles governing judicial review of any action taken by the United States or Vermont pursuant to that authority. Nothing in this Consent Decree

~~shall be deemed to limit the information gathering authority of the United States or Vermont under Sections 104 and 122 of CERCLA, 42 U.S.C. §§ 9604 and 9622, or any other applicable federal or state law or regulation, or to excuse G-I from any disclosure or notification requirements imposed by CERCLA, RCRA, the CAA, the FWPCA, or any other applicable federal or state law or regulation. The United States and Vermont reserves all legal and equitable remedies available to enforce the provisions of this Consent Decree against G-I, the G Holdings Entities, and the ISP Entities.~~

~~117. This Consent Decree shall in no way impair the scope and effect of the G-I's and ACI's discharge under Section 1141 of the Bankruptcy Code as to the United States, Vermont, any third parties, or as to any claims that are not addressed by this Consent Decree.~~

~~XXI. IV. COVENANTS TO THE UNITED STATES AND VERMONT~~

~~A. Covenants to the United States.~~

~~118. G-I, ACI, the Covered G-I Derivative Entities, the G Holding Entities, the Covered G Holdings Derivative Entities, the ISP Entities, and Covered ISP Derivative Entities (with respect to the VAG Site) and G-I, the Covered G-I Derivative Entities, the G Holdings Entities and Covered G Holding Derivative Entities (with respect to the Generator Sites) hereby covenant not to sue and agree not to assert or pursue any claims or causes of action against the United States, including, but not limited to, (i) any direct or indirect claim for reimbursement from the Hazardous Substances Superfund (established pursuant to the Internal Revenue Code, 26 U.S.C. § 9507) under Sections 106(b)(2), 111, 112, 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9611, 9612, 9613, or any other provision of law; (ii) any claim against the United States, including any department, agency or instrumentality of the United States government, under Sections 107 or 113 of CERCLA, 42 U.S.C. §§ 9607 or 9613; or (iii) any claims arising~~

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out of response activities at the VAG Site or the Generator Sites, including any claim under the United States Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law. Nothing in this Consent Decree shall be deemed to constitute preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, 40 C.F.R. § 300.700(d). For purposes of this paragraph only the United States shall mean all departments, agencies and instrumentalities of the United States, and shall not be limited to EPA, DOI, and NOAA.

B. Covenants to Vermont.

~~##21119.~~ G-I, the G Holdings Entities, and the ISP Entities hereby covenant not to sue and agrees not to assert or pursue any claims or causes of action against Vermont with respect to the VAG Site, including, but not limited to any claim against Vermont under Sections 107 or 113 of CERCLA, 42 U.S.C. §§ 9607 or 9613, 10 V.S.A. § 6615, or any other provision of law related to the VAG Site, or any claims arising out of response activities at the VAG Site, including any claim under the United States Constitution, the Vermont Constitution, or any other provision of law.

C. Covenants to the United States and Vermont

~~##221120.~~ G-I, the G Holdings Entities, and the ISP Entities further covenant not to pursue any claims, demands, or causes of action either judicial or administrative, past, present or future, at law or in equity, that they may have against any other persons, firms, corporations, or entity, other than G-I's insurance carriers, for contribution, cost recovery, indemnity, or reimbursement for the costs that G-I will incur pursuant to this Consent Decree related to the VAG Site.

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XXI. ~~VI.~~ CONTRIBUTION PROTECTION

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~~121~~ 121. Generator Site Contribution Protection. With regard to all existing or future party claims with respect to the Generator Sites, including claims for contribution, the parties hereto agree that G-I, ACI, the ~~G-Holdings~~ G Holdings Entities, and Covered G Holdings are entitled to such protection from actions or claims as is provided by Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2). “Matters addressed” in this settlement, as that phrase is used in Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), include all response actions taken and to be taken and all response costs incurred and to be incurred by the United States or potentially responsible parties for response costs or natural resource damages. Notwithstanding the foregoing, with respect to the Tri Cities Barrel Superfund Site, the Novak Sanitary Landfill Superfund Site, the Maryland Stone Sand and Gravel Superfund Site, the Colesville Landfill Superfund Site, the Kin-Buc Landfill Superfund Site, “matters addressed” shall be limited to the United States’ claims for past and future unreimbursed costs set forth in the United States’ Proof of Claim. G-I expressly reserves any and all defenses it may have against any claims by third parties with respect to any matter, transaction, or occurrence relating in any way to the Generator Sites.

~~122~~ 122. VAG Site Contribution Protection. With regard to all existing or future third-party claims with respect to the VAG Site, including claims for contribution, the parties hereto agree that G-I, ACI, the ~~G-Holdings~~ G Holdings Entities, Covered G Holdings Derivative Entities, the ISP Entities, and Covered ISP Derivative Entities, are entitled to such protection from actions or claims as is provided by Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2). “Matters addressed” in this settlement, as that phrase is used in Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), include all response actions taken and to be taken and all response costs incurred and to be incurred by the United States, a state, or potentially responsible parties for response

~~costs or natural resource damages. G-I expressly reserves any and all defenses it may have against any claims by third parties with respect to any matter, transaction, or occurrence relating in any way to the VAG Site.~~

~~XXII. VI.~~ **TREATMENT OF LINDEN SITES**

~~123.~~ With respect to all Linden Sites, all liabilities and obligations of G-I and ACI to the United States under Sections 106 and 107 of CERCLA, 42 U.S.C. §§ 9606 and 9607, and Section 7003 of RCRA, 42 U.S.C. § 6973, arising from Prepetition acts, omissions or conduct of the G-I and ACI, including without limitation the Prepetition generation, transportation, disposal or release of hazardous wastes or materials or the Prepetition ownership or operation of hazardous waste facilities, shall be discharged under Section 1141 of the Bankruptcy Code by the confirmation of a Plan of Reorganization, and the United States shall receive no distributions in the Bankruptcy Cases with respect to such liabilities and obligations, but the applicable reorganized Debtors (G-I and ACI) may be required to pay the United States or such other party as they may designate, such amounts as are provided for in this ~~p~~Paragraph and ~~p~~Paragraph ~~129~~~~311~~. Unless otherwise provided in a Settlement Agreement or Consent Decree, such liabilities and obligations shall be treated and liquidated as general unsecured claims on the terms specified herein.

~~124.~~ If and when the United States undertakes enforcement activities in the course with respect to any Linden Site, the United States may seek a determination of the liability, if any, of G-I and/or ACI and may seek to obtain and liquidate a judgment of liability of G-I and/or ACI or enter into a settlement with G-I and/or ACI with regard to any of the Linden Sites in the manner and before the administrative or judicial tribunal in which the United States' claims would have been resolved or adjudicated if the Bankruptcy Cases had never been

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commenced. However, the United States shall not issue or cause to be issued any unilateral order or seek any injunction against G-I and ACI under Section 106 of CERCLA, 42 U.S.C. § 9606, or Section 7003 of RCRA, 42 U.S.C. § 6973, arising from the Prepetition acts, omissions or conduct of G-I or ACI or their predecessors with respect to any Linden Sites. The United States, G-I, and ACI will attempt to settle each liability or obligation asserted by the United States against the G-I and ACI relating to a Linden Site on a basis that is fair and equitable under circumstances, including consideration of (i) settlement proposals made to other PRPs who are similar to G-I and ACI in the nature of their involvement with the Linden sites, (ii) the fact of the Debtors' bankruptcy, and (iii) the circumstances of this Consent Decree; but nothing in this sentence shall create an obligation of the United States that is subject to judicial review. The aforesaid liquidation of liability may occur notwithstanding the terms of the Plan of Reorganization, the order confirming the Plan of Reorganization, or the terms of any order entered to effectuate the discharge received by the G-I and ACI.

~~125.~~ In any action or proceeding with respect to a Linden Sites, G-I, ACI and the United States reserve any and all rights, claims, and defenses they would have been entitled to assert (except as limited by the Linden Sites Tolling Provision below) had the claim been liquidated in the ordinary course or during the course of the Bankruptcy Cases, including, without limitation, any argument that joint and several liability should or should not be imposed upon G-I and ACI. Nothing herein shall be construed to limit the Parties' rights to assert any and all rights, claims and defenses they may have in actions or proceedings involving other parties with respect to any Linden Sites.

~~126.~~ In the event any Claim is liquidated pursuant to pParagraph ~~126~~ by settlement or judgment to a determined amount (the "Determined Amount"), the applicable

~~Debtor(s) with which such settlement is made or against which such judgment is entered will pay the United States 8.6 percent of the Determined Amount.~~

~~127. Claims of or obligations to the United States resulting from the G-I and ACI's conduct occurring after the Lodging Date of this Consent Decree at the Linden Sites that would give rise to liability under Sections 106 and 107(a)(1)-(4) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a)(1)-(4), or Section 7003 of RCRA, 42 U.S.C. §6973, shall not be discharged under Section 1141 of the Bankruptcy Code by the confirmation of a Plan of Reorganization nor shall such claims or obligations be impaired or affected in any way by the Bankruptcy Cases or confirmation of a Plan of Reorganization.~~

~~128. Nothing in this Consent Decree shall impair or adversely affect any rights, claims, or causes of action of the United States against the G Holdings Entities, the G Holding Derivative Entities, the ISP Entities and ISP Derivative Entities for the Linden Sites. Nothing in this Consent Decree may be used to alter the present liability, if any, of any ISP Entity, ISP Derivative Entity, G Holding Entity or G Holdings Derivative Entity, including but not limited to paragraphs 105, 106, 107 and 126, #28 (8.6 percent) for the Linden Sites.~~

~~129. Linden Sites Tolling Provision.~~

~~(a) The period commencing on October 15, 2008 and ending on October 15, 2018, inclusive (the "Tolling Period"), shall not be included in computing the running of any statute of limitations potentially applicable to any action with respect to the Linden Sites brought by the United States against G-I Holdings, ACI, the G Holdings Entities, the ISP Entities and/or any Derivative Entities as defined above pursuant to Sections 106 and 107(a)(1)-(4) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a)(1)-(4); Section 7003 of RCRA, 42 U.S.C. §6973; Section 303 of~~

CAA, 42 U.S.C. § 7603; or Sections 311 and 504 of the FWPCA, 33 U.S.C. §§ 1321 and 1364

("Tolled Claims").

(b) Any defenses of laches, estoppel, or waiver, or other equitable defenses based upon the running or expiration of any time period shall not include the Tolling Period for the Tolled Claims.

(c) G-I Holdings, ACI, the G Holdings Entities and the ISP Entities shall not assert, plead, or raise against the United States in any fashion, whether by answer, motion or otherwise, any affirmative defense, including, but not limited to, laches, estoppel, waiver or other equitable defense based on the running of any statute of limitations or the passage of time during the Tolling Period in any action brought on the Tolled Claims.

(d) This Tolling Provision does not constitute an admission or acknowledgment of any fact, conclusion of law, or liability by any party to this Consent Decree. Nor does this Tolling Provision constitute an admission or acknowledgment on the part of the United States that any statute of limitations, or defense concerning the timeliness of commencing a civil action, is applicable to the Tolled Claims. The United States reserves the right to assert that no statute of limitations applies to any of the Tolled Claims and that no other defense based upon the timeliness of commencing a civil action is applicable. G-I Holdings, ACI, the G Holdings Entities, the ISP Entities and any Derivative Entities as defined above reserve all rights and defenses which it may have, except as set forth in this Consent Decree, to contest or defend any claim or action the United States may assert or initiate against such entity.

(e) Any extension of the Tolling Period shall be treated as a non-material modification of this Consent Decree pursuant to Section XXIV. (Modification) ~~MODIFICATION.~~

(f) This Tolling Provision does not limit in any way the nature or scope of any claims that

could be brought by the United States in a complaint against G-I Holdings, ACI, the G Holdings Entities, the ISP Entities and/or any Derivative Entities as defined above.

(g). This Tolling Provision is not intended to affect any claims by or against third parties.

XVIII. COVENANTS BY THE UNITED STATES I have not revised this section

A. Section 303 of the CAA and Section 7003 of RCRA.

98. This Consent Decree resolves all civil claims of the United States on behalf of EPA that were alleged or could have been alleged in the Complaint for declaratory and injunctive relief pursuant to Section 303 of CAA, 42 U.S.C. §7603 and Section 7003 of RCRA, 42 U.S.C. §6973 for conditions at, on, under, or emanating from the VAG Site.

99. The United States reserves all legal and equitable remedies available to enforce the provisions of this Consent Decree against G-I. This Consent Decree is not a permit, or a modification of any permit, under any federal, state, or local laws or regulations.

100. This Except as otherwise provided herein, this Consent Decree does not limit or affect the rights of G-I, the G-I Affiliated Entities, or of the United States against any third parties, not party to this Consent Decree.

101. This Except as otherwise provided herein, this Consent Decree shall not be construed to create rights in, or grant any cause of action to, any third party not a party to this Consent Decree.

B. Covenant Not to Sue

102. In consideration of all of the foregoing, including the Acknowledgment of Liability Agreement, the payments that will be made, and the Allowed General Unsecured Claims authorized pursuant to the terms of this Consent Decree, and except as specifically provided in Paragraphs 11211311113 through 115116114116, the United States on behalf of EPA, DOI, and

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NOAA, with respect to the VAG Site, the Generator Sites, the Linden Sites, or the Additional

C. Debtor's G-I's and ACI's Chapter 11 Plan and the United States' Proof of Claim

103. The United States, on behalf of EPA, DOI, and NOAA, waives its right and covenants not

to object to any plan of reorganization of the Debtors G-I and ACI. The United States' Proof of

Claim No. 1509 shall be deemed to be satisfied and/or complied with in full. Moreover, the

United States shall be deemed to have filed a proof of claim or protective proof of claim for

matters addressed in this Consent Decree, which proof of claim and/or protective proof of claim

shall be deemed satisfied and/or complied with in full in accordance with the terms of this

Consent Decree. This Settlement Agreement shall be incorporated by reference into G-I's and

ACI's plan of reorganization.

104. The United States, on behalf of EPA, DOI, and NOAA, covenants not to object to

approval by the Bankruptcy Court of any proposed settlement among G-I and any insurance

carriers or seek to recover any proceeds of any settlement between G-I and its insurance carriers

or any judgment obtained by G-I against its insurance carriers. The United States hereby assign

to G-I agrees that any transfer of rights in any of G-I's insurance policies to the United States with

respect to the VAG Site, the Generator Sites, or the Linden Sites is void and the United States

waives any rights which the United States may have against any insurance carriers that may have

liability to G-I with respect to the VAG Site, the Generator Sites or the Linden Sites.

105. The United States covenants not to assert any claims or commence any action against the

Trustee or the Trust other than to enforce the terms of this Consent Decree. The United States

further agrees to be bound by paragraphs X through XX of the Trust Agreement.

XIX. COVENANTS BY VERMONT

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106. — In consideration of all of the foregoing, including the payments that will be made, and the

107. — Vermont waives its right and covenants not to object to any plan of reorganization of the

Debtors, G-I and ACL. Vermont's Proofs of Claim 1157, 1158 and 1159 shall be deemed to be

satisfied in full. Moreover, Vermont shall be deemed to have filed a proof of claim for matters

addressed in this Consent Decree, which proof of claim shall be deemed satisfied in full in

accordance with the terms of this Consent Decree.

108. — Vermont covenants not to object to approval by the Bankruptcy Court of any proposed

settlement among G-I and any insurance carriers or seek to recover any proceeds of any

settlement between G-I and its insurance carriers or any judgment obtained by G-I against its

insurance carriers. Vermont hereby assign to G-I any rights which Vermont may have against

any insurance carriers that may have liability to G-I with respect to the VAG Site.

109. — Vermont covenants not to assert any claims or commence any action against the Trustee

or the Trust other than to enforce the terms of this Consent Decree.

XX. RESERVATION OF RIGHTS (these next couple of sections may need some revision
depending upon where the CNTS end up....)

110. — Except as set forth in Sections XIX and XX, the covenants not to sue contained in

Sections XIX and XX extend only to G-I and do not extend to any other person. Except as set

forth in Sections XIX and XX, nothing in this Consent Decree is intended as a covenant not to

sue or a release from liability for any person or entity other than G-I, the United States and

Vermont. Except as otherwise provided herein, the United States, Vermont and G-I expressly

reserve all claims, demands and causes of action either judicial or administrative, past, present or

future, at law or in equity, that the United States, Vermont or G-I may have against all other

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persons, firms, corporations, entities, or predecessors of G-I for any matter arising at or relating

111. — Notwithstanding the foregoing, the covenants not to sue contained in this Consent Decree

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shall not apply to, nor affect any action based on, a failure to meet a requirement of this Consent

Decree or criminal liability. In addition, the parties The United States and G-I Vermont reserve

all rights and defenses they may have with respect to conduct of G-I (too narrow??) at the VAG

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Site, the Generator Sites, or the Linden Sites occurring after the Lodging Date of this Consent

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Decree to the extent such conduct would give rise to liability under Sections 106 and 107(a)(1)-

(4) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a)(1)-(4), Section 7003 of RCRA, 42 U.S.C.

§6973 or Section 303 of CAA, 42 U.S.C. § 7603. Nothing in this Consent Decree shall affect or

limit such rights and defenses.

112. — Nothing in this Consent Decree shall be deemed to limit the authority of the United States

to take response action under Section 104 of CERCLA, 42 U.S.C. § 9604, or any other

applicable law or regulation, or to limit the authority of Vermont to respond to releases and

threats of releases of hazardous substances into the environment at and from the VAG Site

pursuant to 10 V.S.A. §§ 1259, 1274, 6601a, 6615 and 6616 or any other applicable law or

regulation or to alter the applicable legal principles governing judicial review of any action taken

by the United States pursuant to that authority. Nothing in this Consent Decree shall be deemed

to limit the information gathering authority of the United States or Vermont under Sections 104

and 122 of CERCLA, 42 U.S.C. §§ 9604 and 9622, or any other applicable federal or state law

or regulation, or to excuse G-I from any disclosure or notification requirements imposed by

CERCLA, RCRA, the CAA, or any other applicable federal or state law or regulation.

113. — The United States reserves all rights to seek response costs and natural resource damages

under CERCLA and reserves all rights to take action under all other applicable federal or state

laws ~~against IES (too narrow)~~ at the Linden Sites as set forth in the Acknowledgement of

114. ~~This Consent Decree shall in no way impair the scope and effect of the Debtors' G-I's and
ACT's discharge under Section 1141 of the Bankruptcy Code as to the United States, Vermont,
any third parties, or as to any claims that are not addressed by this Consent Decree.~~

~~XXI. G-I's COVENANTS~~

A. ~~G-I's Covenants to the United States. (anyone who gets a CNTS should give one back to
us)~~

115. ~~G-I hereby covenants not to sue and agrees not to assert or pursue any claims or causes of
action against the United States with respect to the VAG Site, the Generator Sites, the Additional
Site or the Linden Sites including, but not limited to, (i) any direct or indirect claim for
reimbursement from the Hazardous Substances Superfund (established pursuant to the Internal
Revenue Code, 26 U.S.C. § 9507) under Sections 106(b)(2), 111, 112, 113 of CERCLA, 42
U.S.C. §§ 9606(b)(2), 9611, 9612, 9613, or any other provision of law; (ii) any claim against the
United States, including any department, agency or instrumentality of the United States
government not otherwise included in the definition of United States, under Sections 107 or 113
of CERCLA, 42 U.S.C. §§ 9607 or 9613 related to the VAG Site, the Generator Sites, the
Additional Sites or the Linden Sites; or (iii) any claims arising out of response activities at the
VAG Site, the Generator Sites, the Additional Sites or the Linden Sites including any claim
under the United States Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to
Justice Act, 28 U.S.C. § 2412, as amended, or at common law. Nothing in this Consent Decree
shall be deemed to constitute preauthorization of a claim within the meaning of Section 111 of
CERCLA, 42 U.S.C. § 9611, 40 C.F.R. § 300.700(d).~~

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116. — G-I further covenants not pursue any claims, demands, or causes of action either judicial

B. — G-I's Covenants to Vermont.

— G-I hereby covenants not to sue and agrees not to assert or pursue any claims or causes of action against Vermont with respect to the VAG Site, including, but not limited to any claim against Vermont under Sections 107 or 113 of CERCLA, 42 U.S.C. §§ 9607 or 9613, 10 V.S.A. § 6615, or any other provision of law related to the VAG Site, or any claims arising out of response activities at the VAG Site, including any claim under the United States Constitution, the Vermont Constitution, or any other provision of law.

— G-I's Covenants to the United States and Vermont

119. — G-I further covenants not pursue any claims, demands, or causes of action either judicial or administrative, past, present or future at law or in equity, that G-I may have against any other persons, firms, corporations, or entity, other than G-I's insurance carriers, for contribution, cost recovery, indemnity, or reimbursement for the costs that G-I will incur pursuant to this Consent Decree related to the VAG Site.

117. ▲

XXII. CONTRIBUTION PROTECTION

118. — With regard to all existing or future third party claims with respect to the VAG Site, the Generator Sites, or the Linden Sites, or the Additional Sites, including claims for contribution, the parties hereto agree that G-I, its officers, directors, employees, attorneys, direct and indirect subsidiaries, successors, and assigns, and with respect to the VAG Site only, the G Holdings I affiliated eEntities, are entitled to such protection from actions or claims as is provided by Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2). “Matters addressed” in this settlement, as that phrase is used in Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2),

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~~include without limitation, all response actions taken and to be taken and all response costs~~

~~119. G-I expressly reserves any and all defenses it may have against any claims by third parties with respect to any matter, transaction, or occurrence relating in any way to (i) the VAG Site, (ii) the Linden Sites, or (iii) the Generator Sites.~~

~~XXII~~XXII. RETENTION OF JURISDICTION

130. The Bankruptcy Court and the District Court ~~each~~ retain jurisdiction over this case until termination of this Consent Decree, for the purpose of resolving disputes arising under this Decree pursuant to Section XIV (Dispute Resolution) or entering, terminating or partially terminating, or terminating orders modifying this Decree, or otherwise effectuating or enforcing compliance with the terms of this Consent Decree.

~~XXIII~~XXIII. MODIFICATION

131. The terms of this Consent Decree, including any Attachments, may be modified only by a subsequent written agreement of the Parties. With respect to any modification that constitutes a material change to this Consent Decree, such written agreement shall be filed with the Bankruptcy Court and effective only upon the Bankruptcy Court's approval. Any modification of the SOW, extensions of the Linden Sites Tolling Period, -or changes to ~~of a~~ reporting requirement of this Consent Decree shall be deemed a non-material modification. Any disputes concerning modification of this Decree shall be resolved pursuant to Section Consent Decree (Dispute Resolution).

~~XXIV~~XXIV. PUBLIC PARTICIPATION

132. This Consent Decree shall be lodged with the Court for a period of not less than thirty-30 D days for public notice and comment in accordance with 28 C.F.R. § 50.7. The United States and Vermont reserve their rights to withdraw or withhold their respective consent if the

comments regarding the Consent Decree disclose facts or considerations indicating that the Consent Decree is inappropriate, improper, or inadequate. G-I consents to entry of this Consent Decree without further notice and agrees not to withdraw from or oppose entry of this Consent Decree by the Court or to challenge any provision of the Consent Decree.

~~XXVI~~XXV. **SIGNATORIES/SERVICE**

~~133.~~ Each undersigned representative certifies that he or she is fully authorized to enter into this Consent Decree and to execute and legally bind the Party he or she represents to the terms and conditions of this document. G-I represents that it has authority to legally obligate ~~the~~ ~~133. G Holdings Entities, the ISP Entities, or~~ any of its corporate subsidiaries or affiliates ~~identified herein.~~ to take all actions necessary to comply with the provisions of this Consent Decree.

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134. This Consent Decree may be signed in counterparts, and its validity shall not be challenged on that basis. The parties agree to accept service of process by mail pursuant to the provisions of Section XX (Notices) with respect to all matters arising under or relating to this Consent Decree and to waive the formal service requirements set forth in Rules 4 and 5 of the Federal Rules of Civil Procedure and any applicable Local Rules of this Court including, but not limited to, service of a summons.

~~XXVII~~XXVI. **INTEGRATION**

135. This Consent Decree constitutes the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement of matters addressed in this Consent Decree, and supersedes all prior agreements and understandings, whether oral or written, concerning such matters; provided, however, that nothing in this Consent Decree shall be interpreted as superseding any other Consent Decree or judicially-approved settlement to

CONFIDENTIAL SETTLEMENT MATERIAL US G-I JOINT-REVISED DRAFT OF 3/31/09 NO. 1
SUBJECT TO FED. R. EVID. 408 54/130/09 REDLINE

which G-I is a party that was entered prior to the Lodging Date. Not sure this is broad enough or

listed in Section ~~XXVIII~~ XXVIII ~~XXXXXIXXXXXX~~ (Attachments), which are attached to and deliverables that are subsequently submitted and approved pursuant to this Decree, no other document, representation, inducement, agreement, understanding, or promise constitutes any part of this Decree or the settlement it memorializes, nor shall evidence of any such document, representation, inducement, agreement, understanding, or promise be used in construing the terms of this Decree.

~~XXVIII~~ XXVII. FINAL JUDGMENT

136. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment of the Court as to the United States, the State of Vermont, ~~and G-I~~ and ACI. If this Consent Decree is not entered by the Court for any reason, the United States reserves all rights to obtain the injunctive relief described herein, and the Parties reserve all other rights, remedies, and defenses.

~~XXIX~~ TERMINATION OF INJUNCTIVE RELIEF PROVISIONS

137. Section V of this Consent Decree, ("CAA and RCRA Injunctive Relief at the VAG Site.") shall terminate at the earliest of (i) the completion by the Trust of the Work, (ii) the exhaustion of the cost caps set forth in Paragraph 210, or (iii) the conclusion of Settlement Year EightNine.

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138. If the Trustee believes that the requirements of Section V have been completed in a satisfactory manner or that all applicable cost caps have been exhausted, it may serve upon the United States and Vermont a Request for Termination of Section V of this Consent Decree along with a written certification that it has met the applicable Section V requirements and/or that all applicable cost caps have been exhausted.

CONFIDENTIAL SETTLEMENT MATERIAL ~~US G-I JOINT-REVISED DRAFT OF 3/31/09 NO. 1~~
SUBJECT TO FED. R. EVID. 408 ~~54/130/09 REDLINE~~

139. Following receipt by the United States ~~and Vermont~~ of the Trustee's Request for Termination, the Parties shall confer informally concerning the Request and any disagreement as to whether the Trust has satisfactorily complied with the requirements for termination. If the United States, in consultation with Vermont, agrees that the Section V may be terminated, the Parties shall submit, for the Court's approval, a joint stipulation terminating Section V of this Consent Decree. If the United States, in consultation with Vermont, does not find that it is appropriate under the terms of this Consent Decree to terminated Section V, such finding shall be subject to the Dispute Resolution provisions of Section XIV Paragraph ???.

~~140. If not terminated earlier pursuant to Paragraph 130132, , G-I or the Trustee may make a motion at any time after the end of Settlement Year Nine for the termination of Section V of this Consent Decree. If EPA or Vermont fails to file an objection within 30 days of service of a motion for termination of Section pursuant to this Paragraph, then EPA and Vermont shall automatically be deemed to consent to the termination of Section , and the Court may terminate at the conclusion of Settlement Year Eight that portion of this Consent Decree without further motion of the Parties or order of the Court. notice to EPA or Vermont~~

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~~XXX-XXVIII. ATTACHMENTS~~

~~141-140.~~ The following Attachments are attached to and incorporated into this Consent Decree and are made binding and enforceable as if fully set forth herein:

Attachment #1 – Site Inventory
Attachment #2 – VAG Statement of Work (“SOW”)
Attachment #3 – VAG Site Map
Attachment #4 – Custodial Trust Agreement
Attachment #5 – List of G- ~~Holdings Entities~~ ~~I-Affiliates~~

Attachment #6 – ~~List of ISP Entities~~ ~~Assumption of Liability Agreement~~
~~Attachment #7 – List of Additional Sites~~

Dated and Entered this ____ day of _____, 2009

CONFIDENTIAL SETTLEMENT MATERIAL US G-101 JOINT REVISED DRAFT OF 3/31/09 NO. 1
SUBJECT TO FED. R. EVID. 408 54/130/09 REDLINE

Hon. Rosemary Gambardella
UNITED STATES BANKRUPTCY JUDGE
District of New Jersey

JOHN C. CRUDEN
Acting Assistant Attorney General
Environmental and Natural Resources Division

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CONFIDENTIAL SETTLEMENT MATERIAL US G-I JOINT REVISED DRAFT OF 3/31/09 NO. 1
SUBJECT TO FED. R. EVID. 408 54/130/09 REDLINE

[Insert Vermont and G-I signature blocks]